

COLORADO REVISED STATUTES



TITLES 39-41

2012



Digitized by the Internet Archive
in 2013

<http://archive.org/details/govlawcocode20123941>

Colorado

Revised Statutes

2012

Titles 39-41
Taxation
Utilities
Aeronautics: Aircraft and Airports



Edited, Collated, Revised,
Annotated, and Indexed
Under the Supervision and Direction of the

COMMITTEE ON LEGAL SERVICES

by

JENNIFER G. GILROY OF THE COLORADO BAR,
REVISOR OF STATUTES,
AND THE
OFFICE OF LEGISLATIVE LEGAL SERVICES

Published with Annotations through 272 P.3d 1196, 797 F. Supp. 2d 1163, 661 F.3d 1290, 132 S. Ct. 1882, 449 B.R. 119, 83 U. Colo. L. Rev. 338 (2011), 88 Denv. U.L. Rev. 629 (2011), and 41 Colo. Law. 91 (January 2012). (See Annotation Explanation on page ix.)

*Reenacted by the General Assembly as the
Positive Statutory Law of Colorado of a General and Permanent Nature
and as the Official Statutes of the State of Colorado*

LexisNexis
Printers and Distributors

**CONTENT OF 2012
COLORADO REVISED STATUTES**

**Declaration of Independence
Constitution of the United States
Enabling Act of Colorado
Constitution of the State of Colorado**

Title 1.	Elections	Title 25.	Health
Title 2.	Legislative	Title 25.5.	Health Care Policy and Financing
Title 3.	United States	Title 26.	Human Services Code
Title 4.	Uniform Commercial Code	Title 27.	Behavioral Health
Title 5.	Consumer Credit Code	Title 28.	Military and Veterans
Title 6.	Consumer and Commercial Affairs	Title 29.	Government — Local
Title 7.	Corporations and Associations	Title 30.	Government — County
Title 8.	Labor and Industry	Title 31.	Government — Municipal
Title 9.	Safety — Industrial and Commercial	Title 32.	Special Districts
Title 10.	Insurance	Title 33.	Parks and Wildlife
Title 11.	Financial Institutions	Title 34.	Mineral Resources
Title 12.	Professions and Occupations	Title 35.	Agriculture
Title 13.	Courts and Court Procedure	Title 36.	Natural Resources — General
Title 14.	Domestic Matters	Title 37.	Water and Irrigation
Title 15.	Probate, Trusts, and Fiduciaries	Title 38.	Property — Real and Personal
Title 16.	Criminal Proceedings	Title 39.	Taxation
Title 17.	Corrections	Title 40.	Utilities
Title 18.	Criminal Code	Title 41.	Aeronautics: Aircraft and Airports
Title 19.	Children's Code	Title 42.	Vehicles and Traffic
Title 20.	District Attorneys	Title 43.	Transportation
Title 21.	State Public Defender		Colorado Court Rules
Title 22.	Education		A—Z Index — Comparative Tables
Title 23.	Postsecondary Education		
Title 24.	Government — State		

Copyright © 2012
BY THE COMMITTEE ON LEGAL SERVICES
FOR THE STATE OF COLORADO

**CERTIFICATION
OF
COMMITTEE ON LEGAL SERVICES**

The Committee on Legal Services hereby certifies that the 2012 Colorado Revised Statutes includes all the laws of a general and permanent nature of the state of Colorado as revised and reenacted in Colorado Revised Statutes 1973, together with all of the laws of a general and permanent nature enacted by the General Assembly subsequent to 1973, as corrected, collated, and revised as authorized by and in conformity with Article 5 of Title 2, Colorado Revised Statutes.

COMMITTEE ON LEGAL SERVICES:

Bob Gardner

Member of the House of Representatives
Chair

John Morse

Member of the Senate
Vice-Chair

Jeanne Labuda

Member of the House of Representatives

Claire Levy

Member of the House of Representatives

Carole Murray

Member of the House of Representatives

Mark Waller

Member of the House of Representatives

Greg Brophy

Member of the Senate

Morgan Carroll

Member of the Senate

Ellen Roberts

Member of the Senate

Gail Schwartz

Member of the Senate

OFFICE OF LEGISLATIVE LEGAL SERVICES

Capitol Room 091

Phone: (303) 866-2045

DIRECTOR
Dan L. Cartin

DEPUTY DIRECTOR
Sharon L. Eubanks

REVISOR OF STATUTES
Jennifer G. Gilroy

ASSISTANT DIRECTORS
Bart W. Miller, Deborah F. Haskins, Julie Pelegrin

ADMINISTRATION TEAM

Matthew Dawkins, Office Manager
Wade Harrell, Office Systems Administrator
Patti Dahlberg, Front Office Coordinator and
Senior Legislative Assistant III

Linda Harris, Senior Legislative Assistant II
for Human Resources
Robert Garcia, Senior Legislative Assistant

BUSINESS, HEALTH CARE, NATURAL RESOURCES, AND ENVIRONMENT TEAM

Duane H. Gall, Senior Attorney &
Team Leader
Christine B. Chase, Senior Attorney &
Assistant Team Leader
Thomas Morris, Senior Attorney &
Assistant Team Leader
Kristen J. Forrestal, Senior Attorney
Charles Brackney, Senior Staff Attorney II
for Rule Review

Jery Payne, Senior Staff Attorney II
Jennifer Berman, Staff Attorney
Rebecca L. Hausmann, Head and Senior
Legislative Assistant IV
Patty Amundson, Senior Legislative Assistant IV
Holly Mandis, Senior Legislative Assistant
Kiki Miller, Legislative Assistant

CIVIL AND CRIMINAL LAW, EDUCATION, AND HUMAN SERVICES TEAM

Jeremiah B. Barry, Senior Attorney & Team
Leader
Michael Dohr, Senior Staff Attorney &
Assistant Team Leader
Brita Darling, Senior Staff Attorney

Jane M. Ritter, Senior Staff Attorney
Richard Sweetman, Senior Staff Attorney
Beth Treat, Senior Legislative Assistant
Joel Moore, Legislative Assistant II
Lara Margelofsky, Legislative Assistant

FISCAL POLICY, INFRASTRUCTURE, ELECTIONS, EDUCATION FINANCE, AND STATE & LOCAL GOVERNMENT TEAM

Gregg W. Fraser, Senior Attorney & Team
Leader
Jason Gelender, Senior Attorney &
Assistant Team Leader
Robert S. Lackner, Senior Attorney &
Assistant Team Leader
Edward DeCecco, Senior Attorney
Esther van Mourik, Senior Staff Attorney II

Nicole Myers, Senior Staff Attorney II
Kate Meyer, Senior Staff Attorney
Effie Ameen, Head and Senior Legislative
Assistant III
John Kilgour, Senior Legislative Assistant
Ashley Zimmerman, Senior Legislative Assistant
Cara Meeker, Legislative Assistant

PUBLICATIONS TEAM

Kathryn S. Zambrano, Publications Coordinator
Michele D. Brown, Senior Staff Attorney II
for Annotations
Anja H. Boyd, Assistant Publications
Coordinator & Senior Legislative Assistant IV

Peggy Lewis, Senior Legislative Assistant IV
Carol L. Mullins, Senior Legislative Assistant III
Nathan M. Carr, Senior Legislative Assistant II
to the Revisor of Statutes

TABLE OF CONTENTS

Source note explanation vi

Colorado statutory research vii

Bills without safety clauses - explanation of effective dates ix

Annotation explanation ix

Title 39 TaxationTitle 39 - page 1

Title 40 UtilitiesTitle 40 - page 1

Title 41 Aeronautics: Aircraft and AirportsTitle 41 - page 1

Source Note Information

A source note shows the legislative history of a C.R.S. section and is located immediately after the text of the section. The source note for each section indicates the year the section was added, each year it was amended, and the page of the Session Laws and the section of the bill where the amendment can be found. The source note includes the number of the section in prior codifications when applicable. For amendments made after 1973, information on each specific provision of the section that has been changed by a bill, the specific change to the provision (i.e. added, added with relocations, amended, amended with relocations, repealed, repealed and reenacted, or recreated and reenacted), and the effective date of the bill are shown.

The legislative history is arranged by year of passage; if the section was amended by two or more acts in the same year, the order of the information for that year is determined by the effective dates of the acts. The effective date in the source note indicates the date the act or portion of the act takes effect even if the text of the amendment indicates a different date. If the year is not included with the month and day, the provision is effective the year of passage. Additional information to assist the user in researching C.R.S. sections can be found beginning on page vii.

The following provides a further explanation of the information found in a source note:

“L.” is the symbol for “Session Laws” and will be followed by a number indicating the year when the C.R.S. section was changed by an act generally either creating new law, amending existing law, or repealing existing law; except that, in the constitution, “L.” also means constitutional measures referred by the General Assembly and voted on by the people of Colorado at a general or an odd-year election.

“Ex. Sess.” is the symbol for “Extraordinary Session”. If this symbol follows the year, the amended provision can be found in the Session Laws for an extraordinary session for that year and not in the Session Laws for the regular session of the General Assembly for that year (S, S2 in the Red Book).

“p.” is the symbol for “page” and will be followed by a number indicating the page of the Session Laws where the amendment to the C.R.S. section can be found.

“§” is the symbol for “section” and will be followed by a number indicating the section of the act where the amendment to the C.R.S. section can be found.

“IP” is the symbol for the “introductory portion” to a section, subsection, paragraph, or subparagraph.

“Added” means the provision was newly enacted by the act (N in the Red Book).

“Added with relocations” means the provision in existing law was relocated from one title, article, part, or section to another title, article, part, or section with amendments by the act.

“Amended” means the provision in existing law was amended by the act (A in the Red Book).

“Amended with relocations” means the provision in existing law was amended to reorganize an entire title, article, part, or section by the act.

“Repealed” means the provision was deleted from the existing law by the act through the use of a repeal provision (R in the Red Book).

“R&RE” is the symbol for “Repealed and Reenacted” and means the provision in existing law was repealed and reenacted by the act (RE in the Red Book).

“RC&RE” is the symbol for “Recreated and Reenacted” and means a previously repealed provision has been recreated by the act (RC in the Red Book).

“Added by revision” means a provision providing for the repeal of a statutory provision on a specified date has been added by the Revisor of Statutes as a C.R.S. provision. Adding the provision is necessary because a separate section of the act provided for the repeal of the provision with a future effective date.

“Initiated” means a provision that was amended by means of an initiated petition approved by a vote of the people of Colorado at a general or an odd-year election.

“Referred” means a provision that was amended by a measure referred by the General Assembly and voted on by the people of Colorado at a general or an odd-year election; except that, in the constitution, a referred measure is indicated by “L.” and also means constitutional measures referred by the General Assembly and voted on by the people of Colorado at a general or an odd-year election.

Starting in 2009, references to the bill number and chapter number have been included in the source note. If you are conducting a search on-line, the bill number reference within the source note links directly to the bill itself.

Colorado Statutory Research

Legislative history is not already written. It must be compiled by the researcher from many different sources and materials. The following information is a helpful starting point in identifying information you wish to research. Consult the red book table distributed with the session laws, the softbound editions of Colorado Revised Statutes beginning in 1997, the comparative tables located in the back of the C.R.S. index, C.R.S. 1963 and subsequent cumulative supplements thereto through 1971, and C.R.S. 1973 and annual cumulative supplements thereto through 1996.

Prior to 1921, enacted laws were not compiled into a comparative table, thereby making it more difficult to track the legislative history. Determining the subject matter in the statutory index is the only choice for tracking the history of a statute since a statute did not retain its original number. The General Statutes of 1883 arranged laws into numbered chapters, alphabetically entitled, collated, and arranged by sections. This became the foundation and

model for compiling the statutes until the codification of C.R.S. 1973. (See Revised Statutes of Colorado 1908, An Act Providing For the Compilation, Publication, and Distribution of all the general statutes of the state.)

References in some source notes throughout the Colorado Revised Statutes to “Code 08”, “Code 21”, and “Code 35” are to the Revised Statutes of Colorado 1908, the Compiled Laws of Colorado 1921, and the Colorado Statutes Annotated 1935, respectively. Each of these volumes set forth the general statutes of the state of Colorado, including the Code of Civil Procedure and, in 1935, the Colorado Supreme Court Rules. On January 6, 1941, the Colorado Supreme Court adopted the new Rules of Civil Procedure, which became effective on April 6, 1941, resulting in the publication of a replacement volume. Thereafter, the publication of the Colorado Court Rules, although a continuing part of the Colorado Revised Statutes, contained a combination of the Federal Rules and the Colorado Code of Civil Procedure and, in addition, included some provisions that were entirely distinct from both the Federal Rules and the Colorado Code of Civil Procedure, as adopted or amended by the Supreme Court of Colorado.

To research a statute as it existed in previous years, the following is a chronological list of C.R.S. publications and the correct citation for each publication.

Revised Statutes of Colorado	(1868)	R.S.
General Laws of Colorado	(1877)	G.L.
General Statutes of Colorado	(1883)	G.S.
Revised Statutes of Colorado	(1908)	R.S. 08
Compiled Laws of Colorado	(1921)	C.L.
Colorado Statutes Annotated	(1935)	CSA
Colorado Revised Statutes 1953	(1953)	CRS 53
Colorado Revised Statutes 1963	(1963)	C.R.S. 1963
Colorado Revised Statutes	(1973)	C.R.S.

Comparative Tables:

- R.S. 08 to C.L. 1921 - located in the front of the C.L. 1921
- C.L. 1921 to CSA 1935 - located in the back of the Index to CSA 1935
- CSA 1935 to CRS 1953 - located in the front of the Index to CRS 1953
- CRS 1953 to C.R.S. 1963 - located in the front of the Index to C.R.S. 1963
- C.R.S. 1963 to C.R.S. - located in the back of the Index to C.R.S.

Supplements to C.R.S. 1963 include:

- 1965 hardbound supplement containing laws enacted in 1964 and 1965
- 1967 hardbound supplement containing laws enacted in 1966 and 1967
- 1969 hardbound supplement containing laws enacted in 1968 and 1969
- 1971 hardbound supplement containing laws enacted in 1970 and 1971

The softbound publication of the “Official Report of the Committee on Legal Services” was not intended as an official publication of our office. Copies were distributed to the members of the General Assembly for the purpose of certifying the laws enacted in the 1972 and 1973 Sessions for inclusion in the compilation of the 1973 C.R.S., which was not available until 1974. To find the 1972 or 1973 amended language, refer to the session laws of either 1972 or 1973.

Supplements and Replacement Volumes to C.R.S. 1973 and, on and after 1983, to Colorado Revised Statutes

Titles	Supplements to C.R.S. 1973 and, on and after 1983, to Colorado Revised Statutes	Replacement Volumes and Supplements to Replacement Volumes
Title 39	1975-81 Supplements	1982 Replacement Volume - Vol. 16B 1983-93 Supplements
Titles 40 and 41	1975-83 Supplements	1994 Replacement Volume - Vol. 16B 1995-96 Supplements 1984 Replacement Volume 1985-92 Supplements 1993 Replacement Volume 1994-96 Supplements

Starting in 1997, annual softbound volumes are published each year.

For additional information on researching legislative history, see www.leg.state.co.us, Services Agencies, and select Legislative Legal Services. Choose Legal Topics and click on Researching Legislative History.

**Bills Enacted Without A Safety Clause
Explanation of Effective Date**

If a bill is enacted without a safety clause and an effective date is not indicated in the bill, the effective date is the day following the expiration of the ninety-day period after final adjournment of the General Assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state Constitution unless a referendum petition is filed against the act within such time period. If a referendum petition is filed, the act, if approved by the people, will take effect on the date of the official declaration of the vote thereon by proclamation of the Governor or the date indicated in the act if it is later than the Governor’s proclamation. The source note for a provision contained in such an act will indicate the actual date following the ninety-day period or the date set out in the act. If a referendum petition is filed, the date in the source note will be adjusted accordingly in the next publication following the election where the referendum petition is considered.

Annotations

Beginning in 2012, the annotations for Colorado state appellate court decisions include both public domain and regional reporter case cites. In preparing annotations to court decisions, we endeavor to include the most recent decisions. Occasionally, this may result in the inclusion of a decision before it becomes finalized and published in an official reporter. In such instances, the case cite will contain blank spaces for the volume and page number of the reporter. The volume and page number will be substituted for the blank spaces in subsequent publications of the statutes.

TITLE 39

TAXATION

THE
LITERATURE

TITLE 39

TAXATION

PROPERTY TAX

General and Administrative

- Art. 1. General Provisions, 39-1-101 to 39-1-122.
- Art. 1.5. Prepayment of Ad Valorem Taxes, 39-1.5-101 to 39-1.5-107.
- Art. 2. Division of Property Taxation - Administrator - Board, 39-2-101 to 39-2-131.

Exemptions

- Art. 3. Exemptions, 39-3-101 to 39-3-208.

Deferrals

- Art. 3.5. Tax Deferral for the Elderly and Military Personnel, 39-3.5-101 to 39-3.5-119.
- Art. 3.7. Property Tax Work-off Program for the Elderly, 39-3.7-101 and 39-3.7-102.
- Art. 3.9. Optional Nongaming Property Tax Deferral Plan (Repealed).

Valuation and Taxation

- Art. 4. Valuation of Public Utilities, 39-4-101 to 39-4-110.
- Art. 4.1. Valuation and Assessment of Rail Transportation Property (Repealed).
- Art. 5. Valuation and Taxation, 39-5-101 to 39-5-206.
- Art. 6. Valuation of Mines, 39-6-101 to 39-6-117.
- Art. 7. Valuation of Oil and Gas Leaseholds and Lands, 39-7-101 to 39-7-109.

Equalization

- Art. 8. County Boards of Equalization, 39-8-101 to 39-8-109.
- Art. 9. State Board of Equalization, 39-9-101 to 39-9-109.

Collection and Redemption

- Art. 10. Collection, 39-10-101 to 39-10-116.
- Art. 11. Sale of Tax Liens, 39-11-100.3 to 39-11-152.
- Art. 12. Redemption, 39-12-101 to 39-12-113.

Conveyancing and Evidence of Title

- Art. 13. Documentary Fee on Conveyances of Real Property, 39-13-101 to 39-13-108.
- Art. 14. Real Property Transfer Information, 39-14-101 to 39-14-103.

SPECIFIC TAXES

General and Administrative

- Art. 20. Enforcement of Tax Liens, 39-20-101 to 39-20-107.
- Art. 21. Procedure and Administration, 39-21-101 to 39-21-304.

Income Tax

- Art. 22. Income Tax, 39-22-101 to 39-22-4404.

Estate and Inheritance and Succession Tax

- Art. 23. Inheritance and Succession Tax (Repealed).
Art. 23.5. Colorado Estate Tax, 39-23.5-101 to 39-23.5-117.
Art. 24. Interstate Compromise, Arbitration - Inheritance Tax, 39-24-101 to 39-24-114.

Gift Tax

- Art. 25. Gift Tax (Repealed).

Sales and Use Tax

- Art. 26. Sales and Use Tax, 39-26-101 to 39-26-725.
Art. 26.1. Colorado Tourism Promotion Fund Tax (Repealed).

Gasoline and Special Fuel Tax

- Art. 27. Gasoline and Special Fuel Tax, 39-27-101 to 39-27-310.

Tobacco Tax

- Art. 28. Cigarette Tax, 39-28-101 to 39-28-307.
Art. 28.5. Tax on Tobacco Products, 39-28.5-101 to 39-28.5-112.

Controlled Substances Tax

- Art. 28.7. Controlled Substances Tax (Repealed).

Severance Tax

- Art. 29. Severance Tax, 39-29-101 to 39-29-116.

Enterprise Zones

- Art. 30. Urban and Rural Enterprise Zone Act, 39-30-101 to 39-30-112.

Assistance for the Elderly or Disabled

- Art. 31. Property Tax - Rent - Heat or Fuel - Assistance for the Elderly or Disabled, 39-31-101 to 39-31-105.

Rural Technology Enterprise Zone Act

- Art. 32. Rural Technology Enterprise Zone Act, 39-32-101 to 39-32-107.

Alternative Fuels Rebate

- Art. 33. Alternative Fuels Rebate, 39-33-101 to 39-33-106.

Taxation Commission

- Art. 34. Colorado Commission on Taxation (Repealed).

Aviation Development Zone Act

- Art. 35. Aviation Development Zone Act, 39-35-101 to 39-35-106.

PROPERTY TAX

General and Administrative

Editor's note: Articles 1 to 4, part 1 of article 5, and articles 6 to 12 of this title were numbered as articles 1 to 12 of chapter 137, C.R.S. 1963. These articles and part 1 were repealed and reenacted in 1964, resulting in the addition, relocation, or elimination of sections as well as subject matter. For amendments to these articles and part 1 prior to 1964, consult the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

ARTICLE 1

General Provisions

Cross references: For the constitutional provisions establishing the maximum rate of taxation on property, see § 11 of article X of the state constitution; for the constitutional provision that establishes limitations on spending, the imposition of taxes, and the incurring of debt, see § 20 of article X of the state constitution.

39-1-101.	Legislative declaration.		its and temporary mill levy rate reductions.
39-1-101.5.	Legislative declaration - taxpayer rights.	39-1-112.	Taxes available - when.
39-1-102.	Definitions.	39-1-113.	Abatement and refund of taxes.
39-1-103.	Actual value determined - when.	39-1-114.	Who may administer oath.
39-1-103.5.	Restrictions on information.	39-1-115.	Records prima facie evidence.
39-1-104.	Valuation for assessment - definitions.	39-1-116.	Penalty for divulging confidential information.
39-1-104.1.	Implementation costs - annual revaluation. (Repealed)	39-1-117.	Prior actions not affected.
39-1-104.2.	Legislative declaration - adjustment of residential rate.	39-1-118.	Repeal of law levying state property tax - disposition of funds.
39-1-104.5.	Severed mineral interest - placement on tax roll.	39-1-119.	Funds held for payment of taxes - refund - reduction and increase of amounts - penalty.
39-1-105.	Assessment date.		
39-1-105.5.	Reappraisal ordered based on valuation for assessment study - state school finance payments.	39-1-119.5.	Funds collected by lessors of personal property for payments of taxes - refund - damages.
39-1-106.	Partial interests not subject to separate tax.	39-1-120.	Filing - when deemed to have been made.
39-1-107.	Tax liens.	39-1-121.	Expression of rate of property taxation in dollars per thousand dollars of valuation for assessment - definitions.
39-1-108.	Payment of taxes - grantor and grantee.		
39-1-109.	Taxes paid by mortgagee - effect.	39-1-122.	Interim task force to study property tax assessment - classification - land used for agricultural and other purposes - 2010 interim - legislative declaration - repeal. (Repealed)
39-1-110.	Notice - formation of political subdivision - boundary change of special district.		
39-1-111.	Taxes levied by board of county commissioners.		
39-1-111.5.	Temporary property tax cred-		

39-1-101. Legislative declaration. The general assembly declares that its purpose in enacting articles 1 to 13 of this title is to exercise the authority granted in section 3 of article X of the state constitution wherein it is provided, among other things, that "the actual value of all real and personal property not exempt from taxation under this article shall be determined under general laws, which shall prescribe such methods and regulations as shall secure just and equalized valuations for assessment of all real and personal property not exempt from taxation under this article". It further declares that it intends to fix the

percentage of such determined actual value at which all such property shall be assessed for taxation. It further declares that the actual value of certain classes of real property may not be able to be determined after appropriate consideration of the three approaches to value; therefore, it is incumbent upon the general assembly to provide for a means to determine the actual value of such taxable property, and, to effect this result, the general assembly hereby finds and declares that, when appropriate consideration of the three approaches to value fails to derive an actual value for such property, the actual value of such property shall be determined by comparison of the surface use of such property to property with a similar surface use. It further declares that the actual value of nonproducing oil, gas, and oil and gas mineral interests shall be determined by the income approach capitalizing annual net rental income at an appropriate market rate. To these ends, the provisions of said articles shall be strictly construed.

Source: L. 64: R&RE, p. 675, § 1. C.R.S. 1963: § 137-1-2. L. 83: Entire section amended, p. 1480, § 1, effective April 22. L. 85: Entire section amended, p. 1209, § 1, effective May 9.

ANNOTATION

“Actual value” of residential property must be determined using means and methods applied impartially to all the members of each class, in order to reconcile the requirement of article X, § 20, of the constitution that the market approach be used for valuation with the equalization requirement of article X, § 3. *Podoll v. Arapahoe County Bd. of Equaliz.*, 920 P.2d 861 (Colo. App. 1995), rev’d on other grounds, 935 P.2d 14 (Colo. 1997).

Statute does not prohibit general assembly from adopting other statutes concerning imposition of property taxes. *Senior Corp. v. Bd. of Assessment Appeals*, 702 P.2d 732 (Colo. 1985).

Reclassification from residential to commercial property was just and equal where property was used as a community center in a planned community development despite fact that model homes used for commercial purposes in same county are classified as residential. *Mis-*

sion Viejo v. Douglas Cty. Bd. of Equaliz., 881 P.2d 462 (Colo. App. 1994).

Valuation was not just and equal where county could offer no reasonable explanation why there was a 32.8% increase in the assessed value of plaintiffs’ residences but only a 10.73% average increase as to the vast majority of comparable residences. *Podoll v. Arapahoe County Bd. of Equaliz.*, 920 P.2d 861 (Colo. App. 1995), rev’d on other grounds, 935 P.2d 14 (Colo. 1997).

In determining whether a valuation for assessment is just and equal under the “designed for use” standard, actual use is only one factor to be considered. *Mission Viejo v. Douglas Cty. Bd. of Equaliz.*, 881 P.2d 462 (Colo. App. 1994).

Applied in *City & County of Denver v. Security Life & Accident Co.*, 173 Colo. 248, 477 P.2d 369 (1970).

39-1-101.5. Legislative declaration - taxpayer rights. The general assembly hereby finds and declares that section 3 of article X of the state constitution was approved in 1982 by the voters of Colorado in order to ensure the fair and uniform valuation for assessment of real and personal property located in Colorado; that, since the adoption of said constitutional amendment, the property tax system in Colorado has developed into an impersonal system which is more concerned with the mechanisms to levy and collect such property tax than with the fair and courteous treatment of the owners of real and personal property who pay such tax; that the purpose of the property tax system is to raise revenues to be used for purposes which benefit the citizens of Colorado, including such property owners; that property owners accept their civic responsibility to pay their fair share of taxes to be used for such purposes; that all levels of government involved in the property tax system should recognize that they exist to serve their citizens; and that the owners of real and personal property should be accorded the respect and courtesy which they deserve and should be provided such services which are necessary to assist them in complying with the property tax laws of this state.

Source: L. 88: Entire section added, p. 1276, § 1, effective January 1, 1989.

39-1-102. Definitions. As used in articles 1 to 13 of this title, unless the context otherwise requires:

(1) “Administrator” means the property tax administrator.

(1.1) “Agricultural and livestock products” means plant or animal products in a raw or unprocessed state that are derived from the science and art of agriculture, regardless of the use of the product after its sale and regardless of the entity that purchases the product. “Agriculture”, for the purposes of this subsection (1.1), means farming, ranching, animal husbandry, and horticulture. Effective July 1, 2013, “agriculture” includes silviculture.

(1.3) “Agricultural equipment which is used on the farm or ranch in the production of agricultural products” means any personal property used on a farm or ranch, as defined in subsections (3.5) and (13.5) of this section, for planting, growing, and harvesting agricultural products or for raising or breeding livestock for the primary purpose of obtaining a monetary profit and includes any mechanical system used on the farm or ranch for the conveyance and storage of animal products in a raw or unprocessed state, regardless of whether or not such mechanical system is affixed to real property.

(1.6) (a) “Agricultural land”, whether used by the owner of the land or a lessee, means one of the following:

(I) (A) A parcel of land, whether located in an incorporated or unincorporated area and regardless of the uses for which such land is zoned, that was used the previous two years and presently is used as a farm or ranch, as defined in subsections (3.5) and (13.5) of this section, or that is in the process of being restored through conservation practices. Such land must have been classified or eligible for classification as “agricultural land”, consistent with this subsection (1.6), during the ten years preceding the year of assessment. Such land must continue to have actual agricultural use. “Agricultural land” under this subparagraph (I) shall not include two acres or less of land on which a residential improvement is located unless the improvement is integral to an agricultural operation conducted on such land. “Agricultural land” also includes the land underlying other improvements if such improvements are an integral part of the farm or ranch and if such other improvements and the land area dedicated to such other improvements are typically used as an ancillary part of the operation. The use of a portion of such land for hunting, fishing, or other wildlife purposes, for monetary profit or otherwise, shall not affect the classification of agricultural land. For purposes of this subparagraph (I), a parcel of land shall be “in the process of being restored through conservation practices” if: The land has been placed in a conservation reserve program established by the natural resources conservation service pursuant to 7 U.S.C. secs. 1 to 5506; or a conservation plan approved by the appropriate conservation district has been implemented for the land for up to a period of ten crop years as if the land has been placed in such a conservation reserve program.

(B) A residential improvement shall be deemed to be “integral to an agricultural operation” for purposes of sub-subparagraph (A) of this subparagraph (I) if an individual occupying the residential improvement either regularly conducts, supervises, or administers material aspects of the agricultural operation or is the spouse or a parent, grandparent, sibling, or child of the individual.

(II) A parcel of land that consists of at least forty acres, that is forest land, that is used to produce tangible wood products that originate from the productivity of such land for the primary purpose of obtaining a monetary profit, that is subject to a forest management plan, and that is not a farm or ranch, as defined in subsections (3.5) and (13.5) of this section. “Agricultural land” under this subparagraph (II) includes land underlying any residential improvement located on such agricultural land.

(III) A parcel of land that consists of at least eighty acres, or of less than eighty acres if such parcel does not contain any residential improvements, and that is subject to a perpetual conservation easement, if such land was classified by the assessor as agricultural land under subparagraph (I) or (II) of this paragraph (a) at the time such easement was granted, if the grant of the easement was to a qualified organization, if the easement was granted exclusively for conservation purposes, and if all current and contemplated future uses of the land are described in the conservation easement. “Agricultural land” under this subparagraph (III) does not include any portion of such land that is actually used for nonagricultural commercial or nonagricultural residential purposes.

(IV) A parcel of land, whether located in an incorporated or unincorporated area and regardless of the uses for which such land is zoned, used as a farm or ranch, as defined in subsections (3.5) and (13.5) of this section, if the owner of the land has a decreed right to appropriated water granted in accordance with article 92 of title 37, C.R.S., or a final permit to appropriated groundwater granted in accordance with article 90 of title 37, C.R.S., for purposes other than residential purposes, and water appropriated under such right or permit shall be and is used for the production of agricultural or livestock products on such land;

(V) A parcel of land, whether located in an incorporated or unincorporated area and regardless of the uses for which such land is zoned, that has been reclassified from agricultural land to a classification other than agricultural land and that met the definition of agricultural land as set forth in subparagraphs (I) to (IV) of this paragraph (a) during the three years before the year of assessment. For purposes of this subparagraph (V), the parcel of land need not have been classified or eligible for classification as agricultural land during the ten years preceding the year of assessment as required by subparagraph (I) of this paragraph (a).

(b) All other agricultural property that does not meet the definition set forth in paragraph (a) of this subsection (1.6) shall be classified as all other property and shall be valued using appropriate consideration of the three approaches to appraisal based on its actual use on the assessment date.

(c) An assessor must determine, based on sufficient evidence, that a parcel of land does not qualify as agricultural land, as defined in subparagraph (IV) of paragraph (a) of this subsection (1.6), before land may be changed from agricultural land to any other classification.

(d) Notwithstanding any other provision of law to the contrary, property that is used solely for the cultivation of medical marijuana shall not be classified as agricultural land.

(2) "Assessor" means the elected assessor of a county, or his or her appointed successor, and, in the case of the city and county of Denver, such equivalent officer as may be provided by its charter, and, in the case of the city and county of Broomfield, such equivalent officer as may be provided by its charter or code.

(2.5) "Bed and breakfast" means an overnight lodging establishment, whether owned by a natural person or any legal entity, that is a residential dwelling unit or an appurtenance thereto, in which the innkeeper resides, or that is a building designed but not necessarily occupied as a single family residence that is next to, or directly across the street from, the innkeeper's residence, and in either circumstance, in which:

(a) Lodging accommodations are provided for a fee;

(b) At least one meal per day is provided at no charge other than the fee for the lodging accommodations; and

(c) There are not more than thirteen sleeping rooms available for transient guests.

(3) "Board" means the board of assessment appeals.

(3.1) "Commercial lodging area" means a guest room or a private or shared bathroom within a bed and breakfast that is offered for the exclusive use of paying guests on a nightly or weekly basis. Classification of a guest room or a bathroom as a "commercial lodging area" shall be based on whether at any time during a year such rooms are offered by an innkeeper as nightly or weekly lodging to guests for a fee. Classification shall not be based on the number of days that such rooms are actually occupied by paying guests.

(3.2) "Conservation purpose" means any of the following purposes as set forth in section 170 (h) of the federal "Internal Revenue Code of 1986"; as amended:

(a) The preservation of land areas for outdoor recreation, the education of the public, or the protection of a relatively natural habitat for fish, wildlife, plants, or similar ecosystems; or

(b) The preservation of open space, including farmland and forest land, where such preservation is for the scenic enjoyment of the public or is pursuant to a clearly delineated federal, state, or local government conservation policy and where such preservation will yield a significant public benefit.

(3.5) "Farm" means a parcel of land which is used to produce agricultural products that originate from the land's productivity for the primary purpose of obtaining a monetary profit.

(4) "Fixtures" means those articles which, although once movable chattels, have become an accessory to and a part of real property by having been physically incorporated therein or annexed or affixed thereto. "Fixtures" includes systems for the heating, air conditioning, ventilation, sanitation, lighting, and plumbing of such building. "Fixtures" does not include machinery, equipment, or other articles related to a commercial or industrial operation which are affixed to the real property for proper utilization of such articles. In addition, for property tax purposes only, "fixtures" does not include security devices and systems affixed to any residential improvements, including but not limited to security doors, security bars, and alarm systems.

(4.3) "Forest land" means land of which at least ten percent is stocked by forest trees of any size and includes land that formerly had such tree cover and that will be naturally or artificially regenerated. "Forest land" includes roadside, streamside, and shelterbelt strips of timber which have a crown width of at least one hundred twenty feet. "Forest land" includes unimproved roads and trails, streams, and clearings which are less than one hundred twenty feet wide.

(4.4) "Forest management plan" means an agreement which includes a plan to aid the owner of forest land in increasing the health, vigor, and beauty of such forest land through use of forest management practices and which has been either executed between the owner of forest land and the Colorado state forest service or executed between the owner of forest land and a professional forester and has been reviewed and has received a favorable recommendation from the Colorado state forest service. The Colorado forest service shall annually inspect each parcel of land subject to a forest management plan to determine if the terms and conditions of such plan are being complied with and shall report by March 1 of each year to the assessor in each affected county the legal descriptions of the properties and the names of their owners that are eligible for the agricultural classification. The report shall also contain the legal descriptions of those properties and the names of their owners that no longer qualify for the agricultural classification because of noncompliance with their forest management plans. No property shall be entitled to the agricultural classification unless the legal description and the name of the owner appear on the report submitted by the Colorado state forest service. The Colorado state forest service shall charge a fee for the inspection of each parcel of land in such amount for the reasonable costs incurred by the Colorado state forest service in conducting such inspections. Such fee shall be paid by the owner of such land prior to such inspection. Any fees collected pursuant to this subsection (4.4) shall be subject to annual appropriation by the general assembly.

(4.5) "Forest management practices" means practices accepted by professional foresters which control forest establishment, composition, density, and growth for the purpose of producing forest products and associated amenities following sound business methods and technical forestry principles.

(4.6) "Forest trees" means woody plants which have a well-developed stem or stems, which are usually more than twelve feet in height at maturity, and which have a generally well-defined crown.

(5) Repealed.

(5.5) (a) "Hotels and motels" means improvements and the land associated with such improvements that are used by a business establishment primarily to provide lodging, camping, or personal care or health facilities to the general public and that are predominantly used on an overnight or weekly basis; except that "hotels and motels" does not include:

(I) A residential unit, except for a residential unit that is a hotel unit;

(II) A residential unit that would otherwise be classified as a hotel unit if the residential unit is held as inventory by a developer primarily for sale to customers in the ordinary course of the developer's trade or business, is marketed for sale by the developer, and either has been held by the developer for less than two years since the certificate of occupancy for the residential unit has been issued or is not depreciated under the internal revenue code, as defined in section 39-22-103 (5.3), while owned by the developer; or

(III) A residential unit that would otherwise be classified as a hotel unit if the residential unit has been acquired by a lender or an owners' association through foreclosure, a deed in lieu of foreclosure, or a similar transaction, is marketed for sale by the lender or owners'

association and is not depreciated under the internal revenue code, as defined in section 39-22-103 (5.3), while owned by the lender or owners' association.

(IV) Repealed.

(b) If any time share estate, time share use period, undivided interest, or other partial ownership interest in any hotel unit is owned by any non-hotel unit owner, then, unless a declaration or other express agreement binding on the non-hotel unit owners and the hotel unit owners provides otherwise:

(I) The hotel unit owners shall pay the taxes on the hotel unit not required to be paid by the non-hotel unit owners pursuant to subparagraph (II) of this paragraph (b).

(II) Each non-hotel unit owner shall pay that portion of the taxes on the hotel unit equal to the non-hotel unit owner's ownership or usage percentage of the hotel unit multiplied by the property tax that would have been levied on the hotel unit if the actual value and valuation for assessment of the hotel unit had been determined as if the hotel unit was residential real property.

(III) For purposes of determining the amount due from any hotel unit owner or non-hotel unit owner pursuant to subparagraph (II) of this paragraph (b), the assessor shall, upon the request of any hotel unit owner or non-hotel unit owner, calculate the property tax that would have been levied on the hotel unit if the actual value and valuation for assessment of the hotel unit had been determined as if the hotel unit were residential real property. A hotel unit owner or non-hotel unit owner may petition the county board of equalization for review of the assessor's calculation pursuant to the procedures set forth in section 39-10-114. Any appeal from the decision of the county board shall be governed by section 39-10-114.5.

(c) As used in this subsection (5.5):

(I) "Condominium unit" means a unit, as defined in section 38-33.3-103 (30), C.R.S., and also includes a time share unit.

(II) "Hotel unit owners" means any person or member of a group of related persons whose ownership and use of a residential unit cause the residential unit to be classified as a hotel unit.

(III) "Hotel units" means more than four residential unit ownership equivalents in a project that are owned, in whole or in part, directly, or indirectly through one or more intermediate entities, by one person or by a group of related persons if the person or group of related persons uses the residential units or parts thereof in connection with a business establishment primarily to provide lodging, camping, or personal care or health facilities to the general public predominantly on an overnight or weekly basis. "Hotel unit" means any residential unit included in hotel units. For purposes of this subparagraph (III):

(A) "Control" means the power to direct the business or affairs of an entity through direct or indirect ownership of stock, partnership interests, membership interests, or other forms of beneficial interests.

(B) "Related persons" means individuals who are members of the same family, including only spouses and minor children, or persons who control, are controlled by, or are under common control with each other. Persons are not related persons solely because they engage a common agent to manage or rent their residential units, they are members of an owners' association or similar group, they enter into a tenancy in common or a similar agreement with respect to undivided interests in a residential unit, or any combination of the foregoing.

(IV) "Project" means one or more improvements that contain residential units if the boundaries of the residential units are described in or determined by the same declaration, as defined in section 38-33.3-103 (13), C.R.S.

(V) "Residential unit" means a condominium unit, a single family residence, or a townhome.

(VI) "Non-hotel unit owner" means any owner of a time share estate, time share use period, undivided interest, or other partial ownership interest in any hotel unit who is not a hotel unit owner with respect to the hotel unit.

(VII) "Residential unit ownership equivalent" means:

(A) In the case of time share units, time share interests or time share use periods in one or more time share units that in the aggregate entitle the owner of such time share interests

or time share use periods to three hundred sixty-five days of use in any calendar year or three hundred sixty-six days of use in any calendar year that is a leap year; and

(B) In the case of residential units other than time share units, undivided interests or other ownership interests in one or more such residential units that total one hundred percent. For purposes of this sub-subparagraph (B), any undivided interest or other ownership interest not stated in terms of a percentage of total ownership shall be converted to a percentage of total ownership based on the rights accorded to the holder of the undivided interest or other ownership interest.

(VIII) "Time share unit" means a condominium unit that is divided into time share estates as defined in section 38-33-110 (5), C.R.S., or that is subject to a time share use as defined in section 12-61-401 (4), C.R.S.

(5.6) "Hotels and motels" as defined in subsection (5.5) of this section shall not include bed and breakfasts.

(6) "Household furnishings" means that personal property, other than fixtures, in residential structures and buildings which is not used for the production of income at any time.

(6.3) "Improvements" means all structures, buildings, fixtures, fences, and water rights erected upon or affixed to land, whether or not title to such land has been acquired.

(6.8) "Independently owned residential solar electric generation facility" means personal property that:

- (a) Is located on residential real property;
- (b) Is owned by a person other than the owner of the residential real property;
- (c) Is installed on the customer's side of the meter;
- (d) Is used to produce electricity from solar energy primarily for use in the residential improvements located on the residential real property; and

(e) Has a production capacity of no more than one hundred kilowatts.

(7) (Deleted by amendment, L. 2010, (HB 10-1267), ch. 425, p. 2198, § 1, effective August 11, 2010.)

(7.1) "Innkeeper" means the owner, operator, or manager of a bed and breakfast.

(7.2) "Inventories of merchandise and materials and supplies which are held for consumption by a business or are held primarily for sale" means those classes of personal property which are held primarily for sale by a business, farm, or ranch, including components of personal property to be held for sale, or which are held for consumption by a business, farm, or ranch, or which are rented for thirty days or less. For the purposes of this subsection (7.2), "personal property rented for thirty days or less" means personal property rented for thirty days or less which can be returned at the option of the person renting the property, in a transaction on which the sales or use tax is actually collected before being finally sold, whether or not such personal property is subject to depreciation. It is the purpose of the general assembly to exempt "personal property rented for thirty days or less" from property tax because of the similarity of such property to inventories of merchandise held by retail stores. Further, the general assembly intends this exemption to encompass a transaction under a rental agreement in which the customer pays rent in order to use an item for a brief period of time; it is not intended to encompass an equipment lease contract covering a specific period of time and which includes financial penalties for early cancellation. Except for "personal property rented for thirty days or less", the term "inventories of merchandise and materials and supplies which are held for consumption by a business or are held primarily for sale" does not include personal property which is held for rent or lease or is subject to an allowance for depreciation. For property tax years commencing on or after January 1, 1984, the term does include inventory which is owned by and which is in the possession of the manufacturer of such inventory unless:

(a) Such inventory is in the possession of the manufacturer after having previously been leased by the manufacturer to a customer; and

(b) Such manufacturer has not designated such inventory for scrapping, substantial reconditioning, renovating, or remanufacturing in accordance with its customary practices. For the purposes of this paragraph (b), normal maintenance shall not constitute substantial reconditioning, renovating, or remanufacturing.

(7.5) Repealed.

(7.7) "Livestock" includes all animals.

(7.8) "Manufactured home" means any preconstructed building unit or combination of preconstructed building units that:

(a) Includes electrical, mechanical, or plumbing services that are fabricated, formed, or assembled at a location other than the residential site of the completed home;

(b) Is designed and used for residential occupancy in either temporary or permanent locations;

(c) Is constructed in compliance with the "National Manufactured Housing Construction and Safety Standards Act of 1974", 42 U.S.C. sec. 5401 et seq., as amended;

(d) Does not have motive power;

(e) Is not licensed as a vehicle; and

(f) Is eligible for a certificate of title pursuant to part 1 of article 29 of title 38, C.R.S.

(7.9) "Minerals in place" means, without exception, metallic and nonmetallic mineral substances of every kind while in the ground.

(8) "Mobile home" means a manufactured home built prior to the adoption of the "National Manufactured Housing Construction and Safety Standards Act of 1974", 42 U.S.C. sec. 5401 et seq., as amended.

(8.3) "Modular home" means any preconstructed factory-built building that:

(a) Is ineligible for a certificate of title pursuant to part 1 of article 29 of title 38, C.R.S.;

(b) Is not constructed in compliance with the "National Manufactured Housing Construction and Safety Standards Act of 1974", 42 U.S.C. sec. 5401 et seq., as amended; and

(c) Is constructed in compliance with building codes adopted by the division of housing in the department of local affairs.

(8.4) "Natural cause" means fire, explosion, flood, tornado, action of the elements, act of war or terror, or similar cause beyond the control of and not caused by the party holding title to the property destroyed.

(8.5) "Not for private gain or corporate profit" means the ownership and use of property whereby no person with any connection to the owner thereof shall receive any pecuniary benefit except for reasonable compensation for services rendered and any excess income over expenses derived from the operation or use of the property and all proceeds from the sale of the property of the owner shall be devoted to the furthering of any exempt purpose. Property ownership shall be deemed to have met the requirements of this subsection (8.5) if:

(a) The property is owned by a nonprofit corporation or association whose property is irrevocably dedicated to charitable, religious, or school purposes and no portion of its assets will inure to the benefit of any private person upon the liquidation, dissolution, or abandonment of such corporation or association; or

(b) (I) The operator of the property is a nonprofit entity that would otherwise qualify for property tax exemption under article 3 of this title and is a general partner or member of the owner, and the property is owned by:

(A) An entity organized for the purpose of obtaining tax credits through the new markets tax credit program under 26 U.S.C. sec. 45 D of the federal "Internal Revenue Code of 1986", as amended, or the rehabilitation tax credit program under 26 U.S.C. sec. 47 of the federal "Internal Revenue Code of 1986", as amended, and is eligible for credits; and

(B) An entity that makes payments in lieu of property taxes pursuant to section 39-3-114.5.

(II) The provisions of this paragraph (b) shall apply to applications for exemption filed on or after January 1, 2009, or that are pending on that date.

(8.7) "Perpetual conservation easement" means a conservation easement in gross, as described in article 30.5 of title 38, C.R.S., that qualifies as a perpetual conservation restriction pursuant to section 170 (h) of the federal "Internal Revenue Code of 1986", as amended, and any regulations issued thereunder.

(9) "Person" means natural persons, corporations, partnerships, limited liability companies, associations, and other legal entities which are or may become taxpayers by reason of the ownership of taxable real or personal property.

(10) "Personal effects" means such personal property as is or may be worn or carried on or about the person, and such personal property as is usually associated with the person or customarily used in personal hobby, sporting, or recreational activities and which is not used for the production of income at any time.

(11) "Personal property" means everything that is the subject of ownership and that is not included within the term "real property". "Personal property" includes machinery, equipment, and other articles related to a commercial or industrial operation that are either affixed or not affixed to the real property for proper utilization of such articles. Except as otherwise specified in articles 1 to 13 of this title, any pipeline, telecommunications line, utility line, cable television line, or other similar business asset or article installed through an easement, right-of-way, or leasehold for the purpose of commercial or industrial operation and not for the enhancement of real property shall be deemed to be personal property, including, without limitation, oil and gas distribution and transmission pipelines, gathering system pipelines, flow lines, process lines, and related water pipeline collection, transportation, and distribution systems. Structures and other buildings installed on an easement, right-of-way, or leasehold that are not specifically referenced in this subsection (11) shall be deemed to be improvements pursuant to subsection (6.3) of this section.

(12) "Political subdivision" means any entity of government authorized by law to impose ad valorem taxes on taxable property located within its territorial limits.

(12.1) Repealed.

(12.3) and (12.4) Repealed.

(12.5) "Professional forester" means any person who has received a bachelor's or higher degree from an accredited school of forestry.

(13) "Property" means both real and personal property.

(13.2) "Qualified organization" means a qualified organization as defined in section 170 (h) (3) of the federal "Internal Revenue Code of 1986", as amended.

(13.5) "Ranch" means a parcel of land which is used for grazing livestock for the primary purpose of obtaining a monetary profit. For the purposes of this subsection (13.5), "livestock" means domestic animals which are used for food for human or animal consumption, breeding, draft, or profit.

(14) "Real property" means:

(a) All lands or interests in lands to which title or the right of title has been acquired from the government of the United States or from sovereign authority ratified by treaties entered into by the United States, or from the state;

(b) All mines, quarries, and minerals in and under the land, and all rights and privileges thereunto appertaining; and

(c) Improvements.

(14.3) "Residential improvements" means a building, or that portion of a building, designed for use predominantly as a place of residency by a person, a family, or families. The term includes buildings, structures, fixtures, fences, amenities, and water rights that are an integral part of the residential use. The term also includes a manufactured home as defined in subsection (7.8) of this section, a mobile home as defined in subsection (8) of this section, and a modular home as defined in subsection (8.3) of this section.

(14.4) (a) "Residential land" means a parcel or contiguous parcels of land under common ownership upon which residential improvements are located and that is used as a unit in conjunction with the residential improvements located thereon. The term includes parcels of land in a residential subdivision, the exclusive use of which land is established by the ownership of such residential improvements. The term includes land upon which residential improvements were destroyed by natural cause after the date of the last assessment as established in section 39-1-104 (10.2). The term also includes two acres or less of land on which a residential improvement is located where the improvement is not integral to an agricultural operation conducted on such land. The term does not include any portion of the land that is used for any purpose that would cause the land to be otherwise classified, except as provided for in section 39-1-103 (10.5). The term also does not include land underlying a residential improvement located on agricultural land.

(b) (I) Notwithstanding section 39-1-103 (5) (c) and except as provided in subparagraph (II) of this paragraph (b), when residential improvements are destroyed, demolished,

or relocated as a result of a natural cause on or after January 1, 2010, that, were it not for their destruction, demolition, or relocation due to such natural cause, would have qualified the land upon which the improvements were located as residential land for the following property tax year, the residential land classification shall remain in place for the year of destruction, demolition, or relocation and the two subsequent property tax years. The residential land classification may remain in place for additional subsequent property tax years, not to exceed a total of five subsequent property tax years, if the assessor determines there is evidence the owner intends to rebuild or locate a residential improvement on the land. For purposes of this determination, the assessor may consider, but shall not be limited to considering, a building permit or other land development permit for the land, construction plans for such residential improvement, efforts by the owner to obtain financing for a residential improvement, or ongoing efforts to settle an insurance claim related to the destruction, demolition, or relocation of the residential improvement due to a natural cause.

(II) The residential land classification of the land described in subparagraph (I) of this paragraph (b) shall change according to current use if:

(A) A new residential improvement or part of a new residential improvement is not constructed or placed on the land in accordance with applicable land use regulations prior to the January 1 after the period described in subparagraph (I) of this paragraph (b);

(B) The assessor determines that the classification at the time of destruction, demolition, or relocation as a result of a natural cause was erroneous; or

(C) A change of use has occurred. For purposes of this sub-subparagraph (C), a change of use shall not include the temporary loss of the residential use due to the destruction, demolition, or relocation as a result of a natural cause of the residential improvement.

(14.5) "Residential real property" means residential land and residential improvements but does not include hotels and motels as defined in subsection (5.5) of this section.

(15) Repealed.

(15.5) (a) "School" means:

(I) An educational institution having a curriculum comparable to that of a publicly supported elementary or secondary school or college, or any combination thereof, and requiring daily attendance; or

(II) An institution that is licensed as a child care center pursuant to article 6 of title 26, C.R.S., that is:

(A) Operated by and as an integral part of a not-for-profit educational institution that meets the requirements of subparagraph (I) of this paragraph (a); or

(B) A not-for-profit institution that offers an educational program for not more than six hours per day and that employs educators trained in preschool through eighth grade educational instruction and is licensed by the appropriate state agency and that is not otherwise qualified as a school under this paragraph (a) or as a religious institution.

(b) "School" includes any educational institution that meets the requirements set forth in subparagraph (I) or (II) of paragraph (a) of this subsection (15.5), even if such educational institution maintains hours of operation in excess of the minimum hour requirements of section 22-32-109 (1) (n) (I), C.R.S.

(16) "Taxable property" means all property, real and personal, not expressly exempted from taxation by law.

(17) "Treasurer" means the elected treasurer of a county or his or her appointed successor, and, in the case of the city and county of Denver, such equivalent officer as may be provided by its charter, and, in the case of the city and county of Broomfield, such equivalent officer as may be provided by its charter or code.

(18) "Works of art" means those items of personal property that are original creations of visual art, including, but not limited to:

(a) Sculpture, in any material or combination of materials, whether in the round, bas-relief, high relief, mobile, fountain, kinetic, or electronic;

- (b) Paintings or drawings;
- (c) Mosaics;
- (d) Photographs;
- (e) Crafts made from clay, fiber and textiles, wood, metal, plastics, or any other material, or any combination thereof;
- (f) Calligraphy;
- (g) Mixed media composed of any combination of forms or media; or
- (h) Unique architectural embellishments.

Source: L. 64: R&RE, p. 674, § 1. C.R.S. 1963: § 137-1-1. L. 65: p. 1095, § 1. L. 67: p. 945, § 1. L. 70: p. 379, § 8. L. 73: p. 237, § 17. L. 75: (8) repealed, p. 1473, § 30, effective July 18. L. 77: (7.5), (12.3), and (12.4) added, p. 1728, § 1, effective June 20; (8) RC&RE, p. 1740, § 1, effective January 1, 1978. L. 78: (12.1) added, p. 467, § 1, effective July 1. L. 79: (12.1) amended, p. 1400, § 1, effective March 13; (12.1)(a) amended, p. 1059, § 9, effective June 20; (12.1) repealed, p. 1456, § 4, effective July 1, 1981. L. 80: (18) added, p. 711, § 1, effective April 16. L. 81: (12.1)(d) R&RE, p. 1872, § 4, effective June 29; (12.1)(a)(II) amended, § 5, effective July 1. L. 83: (15) repealed, p. 1485, § 11, effective April 22; (1.1), (1.3), (1.6), (3.5), (5.5), (7.2), (7.8), (13.5), and (14.3) to (14.5) added, (5) repealed, and (12.3)(b) amended, pp. 1486, 1488, §§ 1, 6, 4, effective June 1. L. 84: (7.2) amended, p. 983, § 1, effective May 8. L. 85: IP(7.2) amended and (7.9) added, pp. 1215, 1210, §§ 1, 2, effective May 9. L. 87: (1.3) amended, p. 1382, § 1, effective May 8; (7.5), (12.3), and (12.4) repealed, p. 1304, § 1, effective May 20. L. 88: (4) and (11) amended and (12.1) repealed, pp. 1269, 1275, §§ 4, 14, effective May 29. L. 89: (15.5) added, p. 1482, § 3, effective April 23. L. 90: (1.6)(a) amended, (4.3) to (4.6) and (12.5) added, p. 1706, § 1, effective April 16; (9) amended, p. 450, § 26, effective April 18; (1.6)(a) and (13.5) amended and (8.5) added, pp. 1695, 1703, 1701, §§ 16, 37, 33, effective June 9. L. 91: IP(7.2) amended, p. 1980, § 1, effective April 20; (8) amended, p. 1394, § 2, effective April 27. L. 92: (4) amended, p. 2216, § 3, effective June 2. L. 94: (8) and (14.3) amended, p. 2568, § 86, effective January 1, 1995. L. 95: IP(1.6)(a) amended and (1.6)(a)(III), (3.2), (8.7), and (13.2) added, pp. 173, 174, §§ 1, 2, effective April 7. L. 97: (1.1) and (1.6) amended, p. 509, § 1, effective April 24. L. 98: (11) amended, p. 1276, § 1, effective June 1. L. 99: (15.5) amended, p. 1299, § 1, effective June 3. L. 2000: (15.5)(a)(II) amended, p. 1499, § 1, effective August 2. L. 2001: (2) and (17) amended, p. 268, § 14, effective November 15. L. 2002: (5.5) amended, p. 1939, § 1, effective August 7; (2.5), (3.1), (5.6), and (7.1) added, (5.5)(a)(IV) repealed, and (14.4) amended, pp. 1671, 1673, §§ 1, 3, effective January 1, 2003. L. 2004: (1.6)(a)(I) amended, p. 1208, § 86, effective August 4. L. 2008: (14.3) amended, p. 1914, § 129, effective August 5. L. 2009: (7.7) and (8.3) added and (7.8), (8), and (14.3) amended, (SB-040), ch. 9, p. 70, § 12, effective July 1; (8.5) amended, (SB 09-042), ch. 176, p. 779, § 1, effective August 5. L. 2010: (1.1) amended, (SB 10-177), ch. 392, p. 1861, § 1, effective August 11; (1.6)(a)(III) amended, (HB 10-1197), ch. 175, p. 634, § 1, effective August 11; (6.3) and (6.8) added and (7) and (11) amended, (HB10-1267), ch. 425, p. 2198, § 1, effective August 11. L. 2011: (8.4) added and (14.4) amended, (HB 11-1042), ch. 138, p. 479, § 1, effective May 4; (1.6)(d) added, (HB 11-1043), ch. 266, p. 1213, § 23, effective July 1; (1.6)(a)(I) and (14.4) amended, (HB 11-1146), ch. 166, p. 571, § 1, effective January 1, 2012.

Editor's note: (1) Amendments to subsection (1.6)(a) by House Bill 90-1229 harmonized with House Bill 90-1018.

(2) Amendments to subsection (14.4) by House Bill 11-1042 and House Bill 11-1146 were harmonized, effective January 1, 2012.

Cross references: For the creation of the property tax administrator, see § 39-2-101.

ANNOTATION

- I. Personal Property.
- II. Property.
- III. Real Property.

I. PERSONAL PROPERTY.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Membership or contract in Associated Press is "personal property". Bd. of Comm'rs v. Rocky Mt. News Printing Co., 15 Colo. App. 189, 61 P. 494 (1900).

Signs that can easily be removed and kitchen and bath displays of a temporary nature are not fixtures and are therefore personal property. Also, despite being affixed to or permanently incorporated into a building, pneumatic and sensormatic systems were primarily tied to a business and therefore were not fixtures and were properly classified as personal property. Home Depot USA, Inc. v. Pueblo County Bd. of Comm'rs, 50 P.3d 916 (Colo. App. 2002).

II. PROPERTY.

Bank deposits not "property" of bank but are credits belonging to depositors. Murray v. Bd. of Comm'rs, 67 Colo. 14, 185 P. 262 (1919).

III. REAL PROPERTY.

To determine the proper classification of land for assessment, the trial court must make findings of fact regarding conflicting evidence. C.A. Staack v. Bd. of County Comm'rs, 802 P.2d 1191 (Colo. App. 1990).

Primary factor to be considered in determining proper classification of property for property tax purposes is the actual use of the property on the relevant assessment date. Farny v. Bd. of Equaliz., 985 P.2d 106 (Colo. App. 1999).

In determining a parcel's proper classification for the present assessment year, the board of assessment appeals may not reject a final decision previously rendered by an appropriate tribunal as to the parcel's use during a previous tax year and re-visit that issue. However, a decision with respect to a previous tax year is not binding with respect to the issues presented in a protest of the assessment for a later year. Von Hagen v. Bd. of Equaliz., 948 P.2d 92 (Colo. App. 1997).

The taxpayer has the burden of proof to show any qualifying ranching or farming uses of land in support of a claim for agricultural classification. Palmer v. Bd. of Equaliz., 957 P.2d 348 (Colo. App. 1998); Hepp v. Boulder County Assessor, 113 P.3d 1268 (Colo. App. 2005).

To qualify as "agricultural land" under subsection (1.6), the land must (1) be presently used as a farm or ranch; (2) have been so used during the two-year period prior to the assessment; (3) have been classified or eligible for classification as agricultural land during the 10 years preceding the assessment year; and (4) continue to have actual agricultural use. Boulder County Bd. of Equaliz. v. M.D.C. Constr. Co., 830 P.2d 975 (Colo. 1992).

Second element of test applied in Aberdeen Investors v. Adams County, 240 P.3d 398 (Colo. App. 2009).

Definition of "agricultural land" does not require that the use of the residential improvements be related to the agricultural use of the land. C.A. Staack v. Bd. of County Comm'rs, 802 P.2d 1191 (Colo. App. 1990).

Definition of "agricultural land" does not differentiate between a lessee's primary purpose in using the land and the landowner's primary purpose in acquiring and maintaining ownership of the land, nor does the landowner need to profit or intend to profit from agricultural operations on the land conducted by the owner's lessees. Boulder Cty. Bd. of Equaliz. v. M.D.C. Const. Co., 830 P.2d 975 (Colo. 1992).

Lessees' use of property as a ranch for the primary purpose of making a profit was the determinative factor in qualifying property as agricultural land. Boulder Cty. Bd. of Equaliz. v. M.D.C. Const. Co., 830 P.2d 975 (Colo. 1992).

Subsections (1.6) and (13.5) require that, in order to qualify for agricultural tax treatment, the taxpayer must prove that actual grazing of the parcel took place in the applicable tax year unless the reason the land was not grazed related to a conservation practice or unless the land in question is part of a larger agricultural unit on which grazing or conservation practices have occurred during the relevant tax years. Douglas County Bd. of Equaliz. v. Clarke, 921 P.2d 717 (Colo. 1996).

Whether a party's use constitutes agricultural use is primarily a factual question, but an interpretation of what the legislature intended when it required agricultural use in order for the property to be classified as agricultural for tax purposes is a question of law for the courts to decide. Douglas County Bd. of Equaliz. v. Clarke, 921 P.2d 717 (Colo. 1996).

Initial question that the board of assessment appeals must consider in reviewing a county assessor's classification of land as agricultural is whether it is a segregated parcel that should be treated as a single unit or whether it is part of an integrated larger parcel. This is a factual determination, controlled by whether the

land is sufficiently contiguous to and connected by use with other land to qualify it as part of a large unit or whether it is a parcel segregated by geography or type of use from the balance of the unit. *Douglas County Bd. of Equaliz. v. Clarke*, 921 P.2d 717 (Colo. 1996).

The plain meaning of the phrase “used for grazing” is that livestock actually graze on the land. There must be actual grazing on the parcel during each relevant tax year to qualify for agricultural classification unless the land is subject to non-use for conservation purposes. *Douglas County Bd. of Equaliz. v. Clarke*, 921 P.2d 717 (Colo. 1996).

In order for land that is not used for grazing to qualify for conservation, the taxpayer must prove that the non-use was reasonably related to the overall grazing operation. A professionally prepared conservation plan is not required. The non-use must be both purposeful and an integral part of the grazing operation. Neglect by the landowner or lessee or basic unsuitability of the land for grazing will not suffice. *Douglas County Bd. of Equaliz. v. Clarke*, 921 P.2d 717 (Colo. 1996); *Johnston v. Park County Bd. of Equaliz.*, 979 P.2d 578 (Colo. App. 1999).

Under subsection (1.6)(a)(I), land can only qualify as agricultural land by virtue of being “in the process of being restored through conservation practices” if it has been subjected to a federally established conservation reserve program or a conservation plan approved by an appropriate conservation district as specified in that subsection. *Hepp v. Boulder County Assessor*, 113 P.3d 1268 (Colo. App. 2005).

There is no indication in the text that the landowner must actually profit or intend to profit from agricultural operations on the land conducted by the owner’s lessees. *Boulder Cty. Bd. of Equaliz. v. M.D.C. Const. Co.*, 830 P.2d 975 (Colo. 1992).

Definition of “ranch” does not require that the owner of the land own the livestock grazing on his land to classify the land as agricultural. The owner may lease the land for grazing, and, if such use is for the primary purpose of obtaining a monetary profit from the grazing activity, it constitutes an agricultural use. *C.A. Staack v. Bd. of County Comm’rs*, 802 P.2d 1191 (Colo. App. 1990); *Boulder Cty. Bd. of Equaliz. v. M.D.C. Const. Co.*, 830 P.2d 975 (Colo. 1992).

So long as a parcel of land is used for grazing livestock for profit, it qualifies as a “ranch”, even if the owner of the property is not the one who is conducting the grazing operation. *Estes v. Bd. of Assessment Appeals*, 805 P.2d 1174 (Colo. App. 1990).

“Trespass grazing” does not meet the statutory requirements for agricultural classification as a matter of law. In interpreting sub-

sections (1.6)(a)(I) and (13.5), a court must give appropriate deference to provisions of the property tax administrator’s reference manuals that expressly provide that “trespass grazing” is an insufficient basis for finding that land is “agricultural land”. *Besch v. Jefferson County Bd. of County Comm’rs*, 20 P.3d 1195 (Colo. App. 2000).

The 10-year requirement for agricultural land must be interpreted to mean that the land was classified, or eligible for classification, as agricultural land at some time during the preceding 10 years, not for the whole of that period. Hence, if a property’s agricultural use ceases, that property may, nevertheless, be again classified as agricultural land if it is used for such purpose for three years within 10 years from the date of the original abandonment of that use. *Von Hagen v. Bd. of Equaliz.*, 948 P.2d 92 (Colo. App. 1997).

Owner’s intentions for future use of his land may not be considered in classifying the property as “agricultural land”. *C.A. Staack v. Bd. of County Comm’rs*, 802 P.2d 1191 (Colo. App. 1990).

Focus of the statutory definition of agricultural land is clearly on present and past surface use of the land without regard to any future intent on the part of the owner to develop the land for nonagricultural purposes. *Boulder Cty. Bd. of Equaliz. v. M.D.C. Const. Co.*, 830 P.2d 975 (Colo. 1992).

Land was held not to be “agricultural land” because the primary use of the land during the three years in question was not for farming with the intent to obtain a profit. *Arapahoe P’ship v. Bd. of County Comm’rs*, 813 P.2d 766 (Colo. App. 1990).

The two-year requirement that land be used as a farm or ranch does not require such use be continuous during the prior two years; the plain language of the statute and legislative intent only require that the land be used as such at some point during both of the prior two tax years to the assessment. *Aberdeen Investors v. Adams County*, 240 P.3d 398 (Colo. App. 2009).

In determining whether the two-year requirement that land be used as a farm or ranch was met, use that begins mid-year suffices. Although January 1 is the relevant date for classification purposes, use that began in July counts towards the two-year use requirement. *Aberdeen Investors v. Adams County*, 240 P.3d 398 (Colo. App. 2009).

Parcel of land did not qualify as agricultural land for ad valorem tax purposes under the first criterion of subsection (1.6). Subsection (1.6) requires that the land be used as a farm or ranch currently and for the previous two years. It is the actual use during the relevant time period that is dispositive. In 2006, the actual use of the subject land was not as a farm, or as part of a farm, but as a construction site.

C.P. Bedrock, LLC v. Denver County Bd. of Equaliz., 259 P.3d 514 (Colo. App. 2011).

Parcel of land did not qualify as being in the process of being restored through conservation practices because it did not satisfy the condition of the second criterion in subsection (1.6) that the parcel “has been placed in a conservation reserve program”. Under subsection (1.6) the appropriate government agency must have at least approved the owner or lessee’s application for inclusion in the conservation reserve program at some point before the end of the tax year. The government agencies in question did not approve the application of the farmer lessee of the taxpayer to add the subject land to the conservation program until 2007. Because the subject land was not placed in the conservation program in 2006, the land was not “being restored through conservation practices” under subsection (1.6)(a)(I) during the relevant period. C.P. Bedrock, LLC v. Denver County Bd. of Equaliz., 259 P.3d 514 (Colo. App. 2011).

Parcel of land also did not meet the alternative condition of being subject to “a conservation plan approved by the appropriate conservation district . . . for up to a period of ten crop years”. There was effectively no conservation plan covering the subject land for 2006 or the years prior. Accordingly, the subject land did not qualify as “agricultural land” under subsection (1.6)(a)(I) by virtue of being “in the process of being restored through conservation practices”. Therefore, taxpayer cannot receive favorable tax treatment for the subject land for the 2007 and 2008 tax years on this basis. C.P. Bedrock, LLC v. Denver County Bd. of Equaliz., 259 P.3d 514 (Colo. App. 2011).

Where the administrative agency and administrative law judge responsible for administering the tax code disagree on the interpretation of a statute, the property tax administrator’s interpretation is not entitled to judicial deference if it was not embodied in the assessor’s reference library and is inconsistent with the statutory text. Moreover, the board of assessment appeals’ interpretation deserves greater deference where its interpretation is consistent with its previous opinions. Aberdeen Investors v. Adams County, 240 P.3d 398 (Colo. App. 2009).

Definition of “farm” does not include land used for greenhouses, where the agricultural products produced in the greenhouses do not originate from the land’s productivity. Accordingly, such land may not be classified and valued as agricultural land for property tax purposes. Welby Gardens Co. v. Adams County Bd. of Equaliz., 56 P.3d 1121 (Colo. App. 2002), aff’d, 71 P.3d 992 (Colo. 2003).

Subsection (1.6)(b) defines “other agricultural property” generally and does not provide specific guidance on how it should be valued. A court, therefore, should defer to the

administrative interpretations of the statute. Jefferson County Bd. of County Comm’rs v. S.T. Spano Greenhouses, Inc., 155 P.3d 422 (Colo. App. 2006).

The provisions of the assessor’s reference library interpreting subsection (1.6)(b) require the land component of other agricultural property to be valued based on comparable sales of other agricultural land that is as similar as possible to the subject land in size, location, and present use. Jefferson County Bd. of County Comm’rs v. S.T. Spano Greenhouses, Inc., 155 P.3d 422 (Colo. App. 2006).

The grazing and boarding of “pleasure horses” does not qualify as a “ranching” use. Only the grazing of “livestock” for the purpose of obtaining a monetary profit constitutes a “ranching” use, and horses may constitute “livestock” only if they are used for food or for human or animal consumption, breeding, draft, or profit. The taxpayer’s profit motive alone in boarding and grazing horses on his land is insufficient. Palmer v. Bd. of Equaliz., 957 P.2d 348 (Colo. App. 1998).

Production of eggs in self-contained unit within which the livestock does not touch the ground where the eggs are sold for monetary profit as an agricultural product falls under the statutory definition of a farm, and the eggs fall under the definition of agricultural products. Morning Fresh Farms v. Bd. of Equaliz., 794 P.2d 1073 (Colo. 1990).

Reservoir rights used upon land are taxable as real estate like improvements upon the land on which they are applied. Antero & Lost Park Reservoir Co. v. Bd. of Comm’rs, 65 Colo. 375, 177 P. 148 (1918).

Water rights are included within and constitute a part of the real estate upon which the water is applied. Kendrick v. Twin Lakes Reservoir Co., 58 Colo. 281, 144 P. 884 (1914).

Mineral reservation not real property. A right to prospect for and to remove minerals if found is not a reservation of an estate in the real property involved, but a mere license, subject to revocation before its exercise by the owner of the fee simple estate. Radke v. Union P.R.R., 138 Colo. 189, 334 P.2d 1077 (1959).

Waterworks system deemed realty. Water mains, pipes, and hydrants laid in the public streets and alleys of a city, and the machinery connected therewith and necessary to the operation of a waterworks plant, are realty for the purpose of taxation. Colo. Fuel & Iron Co. v. Pueblo Water Co., 11 Colo. App. 352, 53 P. 232 (1898).

In Colorado, all real property, except that which is expressly exempted by law, is subject to ad valorem taxation. Mesa Verde Co. v. Montezuma County Bd. of Equaliz., 898 P.2d 1 (Colo. 1995).

Possessory interest of concessionaire on national park land owned by the United States

was an "interest in land" and thus constituted "real property" as defined in this section. *Mesa Verde Co. v. Montezuma County Bd. of Equaliz.*, 898 P.2d 1 (Colo. 1995).

Possessory interests in land constitute real property as defined in subsection (14) and therefore also constitute taxable property as defined in subsection (16). *Bd. of County Comm'rs v. Vail Assocs., Inc.*, 19 P.3d 1263 (Colo. 2001).

Reservoir dam not "improvement". A reservoir dam is not subject to taxation as realty as it is not an improvement upon the land on which it is situated. *Antero & Lost Park Reservoir Co. v. Bd. of Comm'rs*, 65 Colo. 375, 177 P. 148 (1918).

Definition of "residential land" contains no prescribed limit on the amount of acreage which may be so classified. Rather, the size of a residential tract must be determined on a case-by-case basis according to the amount of acreage which is being used as a unit in conjunction with the residential improvements on each particular property. *Gyurman v. Weld County Bd. of Equaliz.*, 851 P.2d 307 (Colo. App. 1993); *Farny v. Bd. of Equaliz.*, 985 P.2d 106 (Colo. App. 1999).

A residential dwelling must be situated upon a lot zoned for residential use in order for the lot to qualify as "residential real property" eligible for the percentage ratio of valuation for assessment as determined in accordance with Colo. Const., art. X, § 3(1)(b). *Vail Associates, Inc. v. Bd. of Assessment Appeals*, 765 P.2d 593 (Colo. App. 1988).

Definition of "residential improvement" requires that a structure be designed for use predominantly as a residence rather than simply "actually used" as a residence. *Mission Viejo v. Douglas Cty. Bd. of Equaliz.*, 881 P.2d 462 (Colo. App. 1994).

For purposes of "residential improvements," the phrase "designed for use" means that the

building at the relevant time is devoted to or intended for actual use predominantly as a place of residence. *Mission Viejo Co. v. Douglas County Bd. of Equaliz.*, 881 P.2d 462 (Colo. App. 1994); *Manor Vail Condominium Ass'n v. Bd. of Equaliz.*, 956 P.2d 654 (Colo. App. 1998); *Farny v. Bd. of Equaliz.*, 985 P.2d 106 (Colo. App. 1999).

Small structure built on 320-acre parcel qualified for residential classification since taxpayers actually used structure predominantly as a place of residence and it was at least minimally suitable for such residential purposes. *Farny v. Bd. of Equaliz.*, 985 P.2d 106 (Colo. App. 1999).

Restaurant and meeting rooms were not residential improvements. *Manor Vail Condominium Ass'n v. Bd. of Equaliz.*, 956 P. 2d 654 (Colo. App. 1998).

Building originally designed as a residence could be reclassified based on actual use. Fact that building was originally designed as residence did not conclusively require classification as a residential property under this section. *Mission Viejo v. Douglas Cty. Bd. of Equaliz.*, 881 P.2d 462 (Colo. App. 1994).

Plaintiff, a quasi-municipal corporation and political subdivision of the state, was not a "person" under subsection (9) and did not have standing to seek damages pursuant to § 39-10-115 (3). *Bear Creek Water and Sanitation Dist. v. Bd. of County Comm'rs of Jefferson County*, 902 P.2d 904 (Colo. App. 1995).

Vacant parcel of land did not qualify for residential classification even though it was zoned for residential use, adjacent to the taxpayer's residence, and used in conjunction with the residence as part of the taxpayer's backyard because the adjacent residential parcel was owned by the taxpayer's wife, not the taxpayer, and the vacant parcel did not have a residential dwelling unit on it. *Sullivan v. Bd. of Equaliz.*, 971 P.2d 675 (Colo. App. 1998).

Applied in *Del Mesa Farms v. Bd. of Equaliz.*, 656 P.2d 661 (Colo. App. 1998).

39-1-103. Actual value determined - when. (1) The valuation for assessment of producing mines and nonproducing mining claims shall be determined as provided in article 6 of this title.

(2) The valuation for assessment of leaseholds and lands producing oil or gas shall be determined as provided in article 7 of this title.

(3) The actual value for property tax purposes of the operating property and plant of all public utilities doing business in this state shall be determined by the administrator, as provided in article 4 of this title.

(4) (a) Repealed.

(b) The valuation for assessment of mobile homes shall be determined as provided in section 39-5-203.

(5) (a) All real and personal property shall be appraised and the actual value thereof for property tax purposes determined by the assessor of the county wherein such property is located. The actual value of such property, other than agricultural lands exclusive of building improvements thereon and other than residential real property and other than producing mines and lands or leaseholds producing oil or gas, shall be that value determined by appropriate consideration of the cost approach, the market approach, and the income

approach to appraisal. The assessor shall consider and document all elements of such approaches that are applicable prior to a determination of actual value. Despite any orders of the state board of equalization, no assessor shall arbitrarily increase the valuations for assessment of all parcels represented within the abstract of a county or within a class or subclass of parcels on that abstract by a common multiple in response to the order of said board. If an assessor is required, pursuant to the order of said board, to increase or decrease valuations for assessment, such changes shall be made only upon individual valuations for assessment of each and every parcel, using each of the approaches to appraisal specified in this paragraph (a), if applicable. The actual value of agricultural lands, exclusive of building improvements thereon, shall be determined by consideration of the earning or productive capacity of such lands during a reasonable period of time, capitalized at a rate of thirteen percent. Land that is valued as agricultural and that becomes subject to a perpetual conservation easement shall continue to be valued as agricultural notwithstanding its dedication for conservation purposes; except that, if any portion of such land is actually used for nonagricultural commercial or nonagricultural residential purposes, that portion shall be valued according to such use. Nothing in this subsection (5) shall be construed to require or permit the reclassification of agricultural land or improvements, including residential property, due solely to subjecting the land to a perpetual conservation easement. The actual value of residential real property shall be determined solely by consideration of the market approach to appraisal. A gross rent multiplier may be considered as a unit of comparison within the market approach to appraisal. The valuation for assessment of producing mines and of lands or leaseholds producing oil or gas shall be determined pursuant to articles 6 and 7 of this title.

(b) If, having considered the three approaches prescribed in paragraph (a) of this subsection (5), at the sole discretion of the assessor the use of the three approaches to value cannot accurately determine the actual value of any parcel of taxable property, or in the opinion of the assessor the application of the three approaches to value does not result in uniform, just, and equalized valuation, then the actual value thereof shall be determined by comparison of the surface use of such property with a similar surface use.

(c) Except as provided in section 39-1-102 (14.4) (b), once any property is classified for property tax purposes, it shall remain so classified until such time as its actual use changes or the assessor discovers that the classification is erroneous. The property owner shall endeavor to comply with the reasonable requests of the assessor to supply information which cannot be ascertained independently but which is necessary to determine actual use and properly classify the property when the assessor has evidence that there has been a change in the use of the property. Failure to supply such information shall not be the sole reason for reclassifying the property. Any such request for such information shall be accompanied by a notice that states that failure on the part of the property owner to supply such information will not be used as the sole reason for reclassifying the property in question. Subject to the availability of funds under the assessor's budget for such purpose, no later than May 1 of each year, the assessor shall inform each person whose property has been reclassified from agricultural land to any other classification of property of the reasons for such reclassification including, but not limited to, the basis for the determination that the actual use of the property has changed or that the classification of such property is erroneous.

(d) If a parcel of land is classified as agricultural land as defined in section 39-1-102 (1.6) (a) (III) and the perpetual conservation easement is terminated, violated, or substantially modified so that the easement is no longer granted exclusively for conservation purposes, the assessor may reassess the land retroactively for a period of seven years and the additional taxes, if any, that would have been levied on the land during the seven year period prior to the termination, violation, or modification shall become due.

(6) and (7) Repealed.

(8) In any case in which sales prices of comparable properties within any class or subclass are utilized when considering the market approach to appraisal in the determination of actual value of any taxable property, the following limitations and conditions shall apply:

(a) (I) Use of the market approach shall require a representative body of sales, including sales by a lender or government, sufficient to set a pattern, and appraisals shall reflect due consideration of the degree of comparability of sales, including the extent of similarities and dissimilarities among properties that are compared for assessment purposes. In order to obtain a reasonable sample and to reduce sudden price changes or fluctuations, all sales shall be included in the sample that reasonably reflect a true or typical sales price during the period specified in section 39-1-104 (10.2). Sales of personal property exempt pursuant to the provisions of sections 39-3-102, 39-3-103, and 39-3-119 to 39-3-122 shall not be included in any such sample.

(II) Because of the unique characteristics and limited number of oil shale mineral interests, a minimum of five arm's-length sales of reasonably comparable oil shale mineral interests shall be required to constitute a market for purposes of utilization of the market approach to appraisal in determining the actual value of nonproducing oil shale mineral interests.

(b) Each such sale included in the sample shall be coded to indicate a typical, negotiated sale, as screened and verified by the assessor.

(c) All such coded, typical sales samples shall be supplied to the administrator for the performance of his duties.

(d) In no event shall a sales ratio be established or utilized for any class or subclass of property unless and until there have been at least thirty such coded, typical sales or at least five percent of all properties in such class or subclass within the county have been sold and verified by the assessor as coded, typical sales, whichever amount is greater. When such minimum requirement has not been met but typical sales within any such class or subclass indicate that valuations in the class or subclass are too high or too low, such fact shall be reported to the state board of equalization, which board may order an independent appraisal study in such county.

(e) Repealed.

(f) Such true and typical sales shall include only those sales which have been determined on an individual basis to reflect the selling price of the real property only or which have been adjusted on an individual basis to reflect the selling price of the real property only.

(9) (a) In the case of an improvement which is used as a residential dwelling unit and is also used for any other purpose, the actual value and valuation for assessment of such improvement shall be determined as provided in this paragraph (a). The actual value of each portion of the improvement shall be determined by application of the appropriate approaches to appraisal specified in subsection (5) of this section. The actual value of the land containing such an improvement shall be determined by application of the appropriate approaches to appraisal specified in subsection (5) of this section. The land containing such an improvement shall be allocated to the appropriate classes based upon the proportion that the actual value of each of the classes to which the improvement is allocated bears to the total actual value of the improvement. The appropriate valuation for assessment ratio shall then be applied to the actual value of each portion of the land and of the improvement.

(b) In the case of land containing more than one improvement, one of which is a residential dwelling unit, the determination of which class the land shall be allocated to shall be based upon the predominant or primary use to which the land is put in compliance with land use regulations. If multiuse is permitted by land use regulations, the land shall be allocated to the appropriate classes based upon the proportion that the actual value of each of the classes to which the improvements are allocated bears to the combined actual value of the improvements; the appropriate valuation for assessment ratio shall then be applied to the actual value of each portion of the land.

(10) Common property or common elements within a common interest community as defined in the "Colorado Common Interest Ownership Act", article 33.3 of title 38, C.R.S., shall be appraised and valued pursuant to the provisions of section 38-33.3-105, C.R.S.

(10.5) (a) The general assembly hereby finds and declares that bed and breakfasts are unique mixed-use properties; that all areas of a bed and breakfast, except for the commercial lodging area, are shared and common areas that allow innkeepers and guests to interact in a residential setting; that the land on which a bed and breakfast is located and that is used

in conjunction with the bed and breakfast is primarily residential in nature; and that there appears to exist a wide disparity in how assessors classify the different portions of bed and breakfasts.

(b) Therefore, notwithstanding any other provision of this article, a bed and breakfast shall be assessed as provided in this subsection (10.5). The commercial lodging area of a bed and breakfast shall be assessed at the rate for nonagricultural or nonresidential improvements. Any part of the bed and breakfast that is not a commercial lodging area shall be considered a residential improvement and assessed accordingly. The actual value of each portion of the bed and breakfast shall be determined by the application of the appropriate approaches to appraisal specified in subsection (5) of this section. The actual value of the land containing a bed and breakfast shall be determined by the application of the appropriate approaches to appraisal specified in subsection (5) of this section. The land containing a bed and breakfast shall be assessed as follows:

(I) The portion of land directly underneath a bed and breakfast shall be assessed pursuant to the procedures pertaining to land set forth in subsection (9) of this section.

(II) There shall be a rebuttable presumption that all remaining land shall be assessed as residential land. Such presumption shall only be overcome if there is a nonresidential use not reasonably associated with the operation of the bed and breakfast on some portion of the remaining land, in which case, such portion of the remaining land shall be assessed as nonresidential land.

(III) Subparagraphs (I) and (II) of this paragraph (b) shall not apply to agricultural land.

(11) The general assembly hereby declares that consideration by assessing officers of the cost approach, market approach, and income approach to the appraisal of real property has resulted in valuations of minerals in place which are neither uniform, nor just and equal, because of wide variations within the same locality in quality and quantity of mineral deposits, if any, because of uncertainty in the existence or extent of such deposits, because of difficulty in measuring acquisition or replacement costs, or because of speculative value judgments when minerals in place are not income producing. Therefore, in the absence of preponderant evidence shown by the assessing officer that the use of the cost approach, market approach, and income approach result in uniform and just and equal valuation, minerals in place are not to be considered in determining the actual value of real property.

(12) In any case in which the income approach is utilized in the determination of the actual value of any nonproducing oil shale mineral interests, the following limitations and conditions shall apply:

(a) The assessor shall capitalize the annual rental income for such nonproducing mineral interests at a capitalization rate of thirteen percent. If nonproducing mineral interests are unleased, the assessor shall use the annual rental as defined in paragraph (b) of this subsection (12).

(b) For the purposes of this subsection (12), "annual rental" means annual rental payments, or other compensatory payments payable for the right to hold a mineral interest, which payments are fixed and certain in amount and payable periodically over a fixed period calculated on a twelve-month basis. "Annual rental" shall be the representative annual rental for such mineral interests leased within the county or the area, and "annual rental" does not include royalty payments, advanced royalty payments, bonus payments, or minimum royalty payments covering periods when the mineral interests are not in production, even though said payments may be fixed and certain in amount and payable periodically. For the purposes of this paragraph (b), "royalty payments", "advanced royalty payments", and "minimum royalty payments" mean payments attributable to a portion of the current or future mineral production of a mineral interest, paid for the privilege of producing minerals, and "bonus payments" means compensation paid as consideration for the granting of a mineral lease or other compensatory payments which are payable regardless of the extent of use of the mineral interest and which are fixed and certain in amount and may be payable in one or more periodical increments over a fixed period.

(13) (a) The general assembly hereby finds and declares that, in the consideration of the cost approach, market approach, and income approach to the appraisal of personal property by assessing officers, the cost approach shall establish the maximum value of

property if all costs incurred in the acquisition and installation of such property are fully and completely disclosed by the property owner to the assessing officer.

(b) Therefore, in the assessment of taxable personal property, the assessing officer shall consider the value derived from the cost approach to be the maximum value of the property if the property owner has timely filed his declaration and the declaration contains all relevant information pertaining to the valuation of the property and, also includes, a full disclosure of all costs incurred in the acquisition and installation of all personal property owned by or in the possession of the taxpayer.

(c) Assessing officers shall consider the cost approach to the appraisal of property, pursuant to the provisions of this subsection (13), in good faith and shall deny the use of the cost approach only upon just cause that the requirements set forth in this subsection (13) and in section 39-5-116 have not been complied with by a taxpayer. If it is determined at any time that an assessing officer wrongly denied the use of the cost approach, such assessing officer shall be held liable for all costs incurred by the taxpayer in protesting such assessment based on such denial. However, nothing in this subsection (13) shall preclude the assessing officers from considering the market approach or income approach to the appraisal of personal property when such consideration would result in a lower value of the property and when such valuation is based on independent information obtained by the assessing officers.

(14) (a) The general assembly hereby finds and declares that, in determining the actual value of vacant land, there appears to exist a wide disparity in the treatment of vacant land by the assessing officers of the various counties; that the methods of appraisal currently being utilized by assessing officers for such valuation remain unclear; and that such assessing officers are provided detailed information concerning the appraisal of vacant land in the manuals, appraisal procedures, and instructions prepared and published by the administrator.

(b) The assessing officers shall give appropriate consideration to the cost approach, market approach, and income approach to appraisal as required by the provisions of section 3 of article X of the state constitution in determining the actual value of vacant land. When using the market approach to appraisal in determining the actual value of vacant land as of the assessment date, assessing officers shall take into account, but need not limit their consideration to, the following factors: The anticipated market absorption rate, the size and location of such land, the direct costs of development, any amenities, any site improvements, access, and use. When using anticipated market absorption rates, the assessing officers shall use appropriate discount factors in determining the present worth of vacant land until eighty percent of the lots within an approved plat have been sold and shall include all vacant land in the approved plat. For purposes of such discounting, direct costs of development shall be taken into account. The use of present worth shall reflect the anticipated market absorption rate for the lots within such plat, but such time period shall not generally exceed thirty years. For purposes of this paragraph (b), no indirect costs of development, including, but not limited to, costs relating to marketing, overhead, or profit, shall be considered or taken into account.

(c) (I) For purposes of this subsection (14), "vacant land" means any lot, parcel, site, or tract of land upon which no buildings or fixtures, other than minor structures, are located. "Vacant land" may include land with site improvements. "Vacant land" includes land that is part of a development tract or subdivision when using present worth discounting in the market approach to appraisal; however, "vacant land" shall not include any lots within such subdivision or any portion of such development tract that improvements, other than site improvements or minor structures, have been erected upon or affixed thereto. "Vacant land" does not include agricultural land, producing oil and gas properties, severed mineral interests, and all mines, whether producing or nonproducing.

(II) For purposes of this subsection (14):

(A) "Minor structures" means improvements that do not add value to the land on which they are located and that are not suitable to be used for and are not actually used for any commercial, residential, or agricultural purpose.

(B) "Site improvements" means streets with curbs and gutters, culverts and other sewage and drainage facilities, and utility easements and hookups for individual lots or parcels.

(d) As soon after the assessment date as may be practicable, the assessor shall mail or deliver two copies of a subdivision land valuation questionnaire for each approved plat within the county to the last-known address of the subdivision developer known or believed to own vacant land within such approved plat. Such questionnaire shall be designed to elicit information vital to determining the present worth of vacant land within such approved plat. Such subdivision developer or his agent shall answer all questions to the best of his ability, attaching such exhibits or statements thereto as may be necessary, and shall sign and return the original copy thereof to the assessor no later than the March 20 subsequent to the assessment date. All information provided by the subdivision developer in such questionnaire shall be kept confidential by the assessor; except that the assessor shall make such information available to the person conducting any valuation for assessment study pursuant to section 39-1-104 (16) and his employees and the property tax administrator and his employees.

(e) If any subdivision developer fails to complete and file one or more questionnaires by March 20, then the assessor may determine the actual value of the taxable vacant land within an approved plat which is owned by such subdivision developer on the basis of the best information available to and obtainable by the assessor.

(15) The general assembly hereby finds and declares that assessing officers shall give appropriate consideration to the cost approach, market approach, and income approach to appraisal as required by section 3 of article X of the state constitution in determining the actual value of taxable property. In the absence of evidence shown by the assessing officer that the use of the cost approach, market approach, and income approach to appraisal requires the modification of the actual value of taxable property for the first year of a reassessment cycle in order to result in uniform and just and equal valuation for the second year of a reassessment cycle, the assessing officer shall consider the actual value of any taxable property for the first year of a reassessment cycle, as may have been adjusted as a result of protests and appeals, if any, prior to the assessment date of the second year of a reassessment cycle, to be the actual value of such taxable property for the second year of a reassessment cycle.

(16) (a) The general assembly hereby finds and declares that in the consideration of the cost approach, market approach, and income approach to appraisal for the valuation of superfund water treatment facilities, the cost approach to appraisal does not adequately reflect characteristics specific to superfund water treatment facilities that negatively impact the value of such facilities, including, but not limited to, the lack of income producing ability and the absence of any market for sale of superfund water treatment facilities. Therefore, in the assessment of superfund water treatment facilities, the income approach to appraisal shall be considered the primary indicator of value and the cost approach or market approach to appraisal shall be used only if the value determined under the cost approach or market approach is less than the value determined under the income approach to appraisal. For the purposes of determining the actual value of superfund water treatment facilities as of the assessment date using the income approach to appraisal, the assessing officer shall capitalize the actual income generated by the facility during the calendar year preceding the assessment date at the rate of ten percent per annum.

(b) For purposes of this subsection (16), "superfund water treatment facilities" means real and personal property that is:

(I) Installed and constructed pursuant to an agreement with or an order of the federal government or the state or any of its political subdivisions and to satisfy the federal "Comprehensive Environmental Response, Compensation, and Liability Act of 1980", 42 U.S.C. sec. 9601, et seq., as amended; and

(II) Operated for the purpose of eliminating, reducing, controlling, or disposing of pollutants, as defined in section 25-8-103 (15), C.R.S., that could alter the physical, chemical, biological, or radiological integrity of state waters if released into state waters.

(17) (a) The general assembly declares that the valuation of possessory interests in exempt properties is uncertain and highly speculative and that the following specific standards for the appropriate consideration of the cost approach, the market approach, and the income approach to appraisal in the valuation of possessory interests must be provided

by statute and applied in the valuation of possessory interests to eliminate the unjust and unequalized valuations that would result in the absence of specific standards:

(I) The actual value of any possessory interest of the lessee or permittee of lands owned by the United States and leased or permitted for use for ski area recreational purposes in connection with a business conducted for profit shall be determined by capitalizing at an appropriate rate the annual fee paid to the United States by the lessee or permittee of such land for the use thereof in the immediately preceding calendar year, adjusted to the level of value using a factor or factors to be published by the administrator pursuant to the same procedures and principles as are provided for property in section 39-1-104 (12.3) (a) (I). The rate used to capitalize any fee pursuant to this subparagraph (I) shall include an appropriate rate of return, an appropriate adjustment for the applicable property tax rate, and an appropriate adjustment to reflect the portion of the fee, if any, required to be paid over by the United States to the state of Colorado and its political subdivisions.

(II) (A) Except for possessory interests in land leased or permitted for use for ski area recreational purposes valued in accordance with subparagraph (I) of this paragraph (a) and except as otherwise provided in subparagraph (III) of this paragraph (a), the actual value of a possessory interest in land, improvements, or personal property shall be determined by appropriate consideration of the cost approach, the market approach, and the income approach to appraisal. When the cost or income approach to appraisal is applicable, the actual value of the possessory interest shall be determined by the present value of the reasonably estimated future annual rents or fees required to be paid by the holder of the possessory interest to the owner of the underlying real or personal property through the stated initial term of the lease or other instrument granting the possessory interest; except that the actual value of a possessory interest in agricultural land, including land leased by the state board of land commissioners other than land leased pursuant to section 36-1-120.5, C.R.S., shall be the actual amount of the annual rent paid for the property tax year. The rents or fees used to determine the actual value of a possessory interest under the cost or income approach to appraisal shall be the actual contract rents or fees reasonably expected to be paid to the owner of the underlying real or personal property unless it is shown that the actual contract rents or fees to be paid for the possessory interest being valued are not representative of the market rents or fees paid for that type of real or personal property, in which case the market rents or fees shall be substituted for the actual contract rents or fees.

(B) The rents or fees taken into account under the cost or income approach to appraisal under sub-subparagraph (A) of this subparagraph (II) shall exclude that portion of the rents and fees required to be paid for all rights other than the exclusive right to use and possess the land, improvements, or personal property. Such rents or fees to be excluded shall include, but shall not be limited to, any portion of such rents or fees attributable to any of the following: Nonexclusive rights to use and possess public property, such as roads, rights-of-way, easements, and common areas; rights to conduct a business, as determined in accordance with guidelines to be published by the administrator; income of the holder of the possessory interest that is not directly derived from and directly related to the use or occupancy of the possessory interest; any amount paid under a timber sales contract or similar agreement for the purchase of timber or for the right to acquire and remove timber; and reimbursement to the owner of the underlying real or personal property of the reasonable costs of operating, maintaining, and repairing the land, improvements, or personal property to which the possessory interest pertains, regardless of whether such costs are separately stated, provided that the types of such costs can be identified with reasonable certainty from the documents granting the possessory interest. The actual value of the possessory interest so determined shall be adjusted to the taxable level of value using a factor or factors to be published by the administrator pursuant to the same procedures and principles as are provided for personal property in section 39-1-104 (12.3) (a) (I).

(III) Subparagraphs (I) and (II) of this paragraph (a) shall not apply to any management contract. In the case of a management contract, the possessory interest shall be presumed to have no actual value. For purposes of this subparagraph (III), "management contract" means a contract that meets all of the following criteria:

(A) The government owner of the real or personal property subject to the contract directly or indirectly provides the management contractor all funds to operate the real or personal property;

(B) The government owns all of the real or personal property used in the operation of the real or personal property subject to the contract;

(C) The government maintains control over the amount of profit the management contractor can realize or sets the prices charged by the management contractor, or the management contractor's exclusive obligation is to operate and manage the real or personal property for which the management contractor receives a fee;

(D) The government reserves the right to use the real or personal property when it is not being managed or operated by the management contractor;

(E) The management contractor has no leasehold or similar interest in the real or personal property;

(F) To the extent the management contractor manages a manufacturing process for the government on the real property subject to the contract, the government owns all or substantially all of the personal property used in the process; and

(G) The real or personal property is maintained and repaired at the expense of the government.

(b) This subsection (17) shall not apply to and shall not be construed to affect or change the valuation of public utilities pursuant to article 4 of this title, the valuation of equities in state lands pursuant to section 39-5-106, the valuation of mines pursuant to article 6 or any other article of this title, or the valuation of oil and gas leaseholds and lands pursuant to article 7 of this title.

(18) (a) The general assembly hereby finds and declares that real property that is located in a district in which limited gaming is authorized but that is not used for limited gaming may be unfairly valued by comparison of said real property with real property that is used for limited gaming. The general assembly further finds that real property that is located in a gaming district may be reasonably used for purposes other than limited gaming, that such alternative uses may be beneficial in strengthening the economies of gaming districts, and that such alternative uses should be encouraged. In addition, the general assembly finds that applying the cost and market approaches to appraisal in valuing real property that is located in a limited gaming district but that is not used for limited gaming may result in an unfairly high valuation of real property that is reasonably used for a purpose other than limited gaming. Therefore, the provisions of this subsection (18) shall govern the classification and valuation of real property that is located within a gaming district but that is not used for limited gaming.

(b) For property tax years beginning on or after January 1, 1999, if the actual use as of the assessment date of any real property that is located in a limited gaming district but that is not used for limited gaming is used as residential real property, the real property shall be classified as residential real property, and the assessing officer shall determine the actual value of said real property as of the assessment date by applying the market approach to appraisal. If, due to the limited number of real properties located within a limited gaming district that are not used for limited gaming and that are used as residential real property, comparable valuation data is not available from within a limited gaming district to determine adequately the actual value of real property located within said limited gaming district that is not used for limited gaming and that is used as residential real property, notwithstanding any law to the contrary, the assessing officer shall consider sales of reasonably comparable residential real property located inside and outside of any limited gaming district for purposes of utilization of the market approach to appraisal in determining the actual value of said real property located within a limited gaming district that is not used for limited gaming and that is used as residential real property.

(c) For property tax years beginning on or after January 1, 1999, if the actual use as of the assessment date of any real property that is located in a limited gaming district is not for limited gaming or as residential real property, including but not limited to vacant land, the real property shall be classified as nongaming real property, and the assessing officer shall determine the actual value of said real property as of the assessment date by giving appropriate consideration to the cost, market, and income approaches to appraisal. If, due to the limited number of real properties located within a limited gaming district that are not used for limited gaming or as residential real property, comparable valuation data is not available from within a limited gaming district to determine adequately the actual value of

real property located within said limited gaming district that is not used for limited gaming or as residential real property, notwithstanding any law to the contrary, the assessing officer shall:

(I) Consider sales of reasonably comparable real property that is not used as residential property located inside and outside of any limited gaming district for purposes of utilization of the market approach to appraisal in determining the actual value of real property located within a limited gaming district that is not used for limited gaming or as residential real property; and

(II) Consider reasonably comparable real property that is not used as residential property located inside and outside of any limited gaming district for purposes of utilization of the income approach to appraisal in determining the actual value of real property located within a limited gaming district that is not used for limited gaming or as residential real property.

(d) For purposes of this subsection (18), real property is considered to be “used for limited gaming” if the owner or lessee of the real property holds a retail gaming license issued pursuant to part 5 of article 47.1 of title 12, C.R.S., and if the owner or lessee actually uses the real property in offering limited gaming for play or for administrative support services related to providing limited gaming or makes the real property available for other uses by persons who are engaged in limited gaming for play, including but not limited to using the property for parking, for a restaurant, or for a hotel or motel.

Source: L. 64: R&RE, p. 676, § 1. C.R.S. 1963: § 137-1-3. L. 67: p. 945, §§ 2-4. L. 70: p. 380, § 9. L. 71: p. 1242, § 1. L. 73: pp. 237, 1429, §§ 18, 1. L. 75: (6)(a)(I) amended, p. 1453, § 1, effective May 22; (4)(b) repealed, p. 1473, § 30, effective July 18. L. 76: (5) amended, p. 754, § 3, effective January 1, 1977. L. 77: (5) amended and (7) and (8) added p. 1729, § 2, effective June 20; (4)(b) RC&RE, p. 1740, § 2, effective January 1, 1978. L. 81: (5)(a) amended, p. 1829, § 1, effective June 12. L. 83: (8)(d) amended, p. 1489, § 1, effective April 21; (9) added, p. 1492, § 1, effective April 21; (4)(a) and (5)(b) repealed and (5)(a), IP(8), and (8)(a) amended, pp. 1485, 1480, §§ 11, 2, effective April 22; (6) repealed, p. 1488, § 6, effective June 1. L. 84: (8)(e) and (8)(f) added, p. 986, § 1, effective March 16; (10) added, p. 987, § 1, effective April 5. L. 85: (5)(b) RC&RE, (8)(a) amended, and (11) and (12) added, pp. 1210, 1211, §§ 3, 4, effective May 9; (5)(a) amended, p. 1217, § 1, effective May 24. L. 87: (7) repealed, p. 1304, § 1, effective May 20; (13) added, p. 1415, § 2, effective June 16; (8)(e) amended, p. 1388, § 9, effective June 20. L. 88: (14) added, p. 1281, § 4, effective January 1, 1989. L. 89: (8)(a)(I) amended, p. 1482, § 4, effective May 9; (14)(b) and (14)(c)(I) amended, p. 1449, § 1, effective June 7. L. 90: (5)(c), (14)(d), and (14)(e) added, (8)(a)(I) and (14)(b) amended, and (8)(e) repealed, pp. 1701, 1688, 1705, §§ 34, 3, 2, 41, effective June 9; (15) added, p. 1697, § 22, effective January 1, 1991. L. 91: (8)(a)(I) amended, p. 2005, § 3, effective June 6. L. 92: (14)(b) amended, p. 2215, § 1, effective June 2. L. 93: (10) amended, p. 654, § 22, effective April 30; (5)(c) amended, p. 1743, § 2, effective July 1. L. 95: (8)(a)(I) amended, p. 8, § 2, effective March 9; (5)(a) amended and (5)(d) added, p. 174, § 3, effective April 7. L. 96: (16) added, p. 130, § 1, effective March 25; (5)(a) and (8)(a)(I) amended, p. 718, § 1, effective May 22; (14)(c) amended, p. 1198, § 1, effective June 1; (17) added, p. 1852, § 4, effective June 5. L. 97: (17)(a)(II)(B) amended, p. 1030, § 63, effective August 6. L. 98: (18) added, p. 110, § 1, effective March 23. L. 2000: (5)(a) amended, p. 1499, § 2, effective August 2. L. 2002: IP(17)(a) amended, p. 1008, § 1, effective August 7; (10.5) added, p. 1672, § 2, effective January 1, 2003. L. 2003: (17)(a)(II)(A) amended, p. 1696, § 1, effective January 1, 2004; (17)(a)(II)(B) amended, p. 2492, § 1, effective January 1, 2004. L. 2004: (17)(a)(II)(A) amended, p. 1088, § 1, effective January 1, 2005. L. 2010: (5)(a) amended, (HB 10-1197), ch. 175, p. 634, § 2, effective August 11. L. 2011: (5)(c) amended, (HB 11-1042), ch. 138, p. 480, § 2, effective May 4.

ANNOTATION

Law reviews. For article, “Appealing Property Tax Assessments,” see 15 Colo. Law. 798

(1986). For article, “Legislative Update on Property Taxation and New Arbitration Proce-

dures", see 17 Colo. Law. 1751 (1988). For article, "Taxation of Possessory Interests in Exempt Property Under S.B. 02-157", see 32 Colo. Law. 81 (March 2003).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Standing to challenge constitutionality of subsection (5). Members of board of county commissioners, also empowered to sit as board of equalization to equalize valuations, lack standing to challenge the constitutionality of ministerial duties imposed by subsection (5). *Bd. of County Comm'rs v. Fifty-first Gen. Ass'y*, 198 Colo. 302, 599 P.2d 887 (1979).

Requirement in subsection (5)(a) that a property assessor give "appropriate consideration" to the income, market, and cost approaches does not require complete and documented calculations of each approach or an explanation of the reasons for excluding those not used. *ASARCO, Inc. v. Bd. of Comm'rs of Lake County*, 916 P.2d 550 (Colo. App. 1995).

If the market and income approaches to valuation are inapplicable or do not produce a meaningful valuation for assessment purposes, it is appropriate for the assessor to use only the cost approach. *ASARCO, Inc. v. Bd. of Comm'rs of Lake County*, 916 P.2d 550 (Colo. App. 1995).

Under the cost approach, reproduction cost rather than replacement cost was held to be an appropriate measure in light of the special purpose and regulatory specifications applicable to an EPA-ordered water treatment facility. *ASARCO, Inc. v. Bd. of Comm'rs of Lake County*, 916 P.2d 550 (Colo. App. 1995).

The comparable sales price, rather than the manufacturer's cost, is the appropriate starting point for the cost approach. *Xerox Corp. v. Bd. of County Comm'rs*, 87 P.3d 189 (Colo. App. 2003).

No requirement for assessor or board to compare valuations with other counties to determine compliance with article X, § 3, of the Colorado Constitution. The issue of just and equal valuation among counties is not cognizable in an appeal to the board of an assessor's valuation, and constitutional requirement does not require an assessor or a board to compare valuations with those made for comparable properties in other counties. *Bd. of Assess. Appeals v. E.E. Sonnenberg*, 797 P.2d 27 (Colo. 1990).

Actual value is the guiding principle for the taxation of real property in Colorado. *Arapahoe County Bd. of Equaliz. v. Podoll*, 935 P.2d 14 (Colo. 1997); *San Miguel County Bd. of Equaliz. v. Telluride Co.*, 947 P.2d 1381 (Colo. 1997).

Valuing similar property, similarly situated is consistent with statutory and constitutional mandates to achieve just and equalized val-

ues for purposes of taxation. *Telluride Co. v. County Bd. of Equaliz.*, 962 P.2d 313 (Colo. App. 1997).

Value determined as of date of assessment. County assessor has the duty of determining the values of properties as they existed on the date of the assessment. *Colo. & Utah Coal Co. v. Rorex*, 149 Colo. 502, 369 P.2d 796 (1962).

Assessor's valuation presumed correct. An assessor's ascertainment of the value of property for taxation is presumed to be right. *Colo. & Utah Coal Co. v. Rorex*, 149 Colo. 502, 369 P.2d 796 (1962).

Assessors furnished guides to aid in valuation. In order to promote uniformity and equality in taxation, assessors are supplied with manuals which furnish them with guides for determining valuations for tax purposes. *Stalder v. Bd. of County Comm'rs*, 147 Colo. 493, 364 P.2d 389 (1961); *Colo. & Utah Coal Co. v. Rorex*, 149 Colo. 502, 369 P.2d 796 (1962).

Clear and convincing evidence must be adduced to overcome presumption of correctness of an assessor's valuation of property for taxation. *Colo. & Utah Coal Co. v. Rorex*, 149 Colo. 502, 369 P.2d 796 (1962).

Presumption of correction of assessor's valuation overcome. *May Stores Shopping Centers, Inc. v. Shoemaker*, 151 Colo. 100, 376 P.2d 679 (1962).

Presumption of correctness of assessor's valuation rebutted where sufficient evidence presented of assessor's failure to comply with requirements of subsection (5)(a). *Transamerican Realty Corp. v. Clifton*, 817 P.2d 1049 (Colo. App. 1991).

Method of valuation is legislative determination. The method by which valuation for taxation purposes is to be formulated is a legislative function and is not a proper subject for judicial determination. *Bd. of County Comm'rs v. Bd. of Assess. Appeals*, 628 P.2d 156 (Colo. App. 1981); *Leavell-Rio Grande v. Bd. of Assess. Appeals*, 753 P.2d 797 (Colo. App. 1988).

Assessor held not to have followed mandate of statute in determining "actual value". *Majestic Great W. Sav. & Loan Ass'n v. Reale*, 30 Colo. App. 564, 499 P.2d 644 (1972).

Market value usually measure of "actual value". In determining "actual value", market value is usually taken as the measure, because most likely to be just and least difficult of ascertainment. *Fellows v. Grand Junction Sugar Co.*, 78 Colo. 393, 242 P. 635 (1925).

For determination of "market value", see *Union P. R. R. v. Hanna*, 73 Colo. 162, 214 P. 550 (1923); *Fellows v. Grand Junction Sugar Co.*, 78 Colo. 393, 242 P. 635 (1925); *City & County of Denver v. Lewin*, 106 Colo. 331, 105 P.2d 854 (1940); *Stalder v. Bd. of County Comm'rs*, 147 Colo. 493, 364 P.2d 389 (1961); *Colo. & Utah Coal Co. v. Rorex*, 149 Colo. 502, 369 P.2d 796 (1962); *May Stores Shopping Cen-*

ters, Inc. v. Shoemaker, 151 Colo. 100, 376 P.2d 679 (1962).

Trial court has no authority to make an assessment or fix a valuation. Colo. & Utah Coal Co. v. Rorex, 149 Colo. 502, 369 P.2d 796 (1962).

Review by the court is therefore limited to the narrow ascertainment of agency abuse of discretion by neglecting to abide by the statutes in the calculation of tax assessments. Leavell-Rio Grande v. Bd. of Assess. Appeals, 753 P.2d 797 (Colo. App. 1988).

The language of the statute is unambiguous and sets forth an exclusive and restrictive set of unusual circumstances upon which the assessor may, in his discretion, rely in calculating the actual value of commercial property. Leavell-Rio Grande v. Bd. of Assess. Appeals, 753 P.2d 797 (Colo. App. 1988).

Factors, such as a depressed economy, which encourage rent abatement, are not included within that list of unusual circumstances. Leavell-Rio Grande v. Bd. of Assess. Appeals, 753 P.2d 797 (Colo. App. 1988).

Unusual conditions affecting actual value are factors for consideration by the assessor in assessing real property. Depreciation factors apply only to personal property. CF & I Steel Corp. v. Patton, 765 P.2d 586 (Colo. App. 1988), rev'd on other grounds, 785 P.2d 605 (Colo. 1990).

Reasonable future use is relevant to a property's current market value for tax assessment purposes. Bd. of Assess. Appeals v. Arlberg Club, 762 P.2d 146 (Colo. 1988).

Highest and best future use of land in its condition at the time of valuation may be considered in determining present fair market value while speculative future uses may not be taken into consideration. Bd. of Assess. Appeals v. Arlberg Club, 762 P.2d 146 (Colo. 1988).

Subsection (5)(a) requires that, if an approach to value is applicable, assessor must give it appropriate consideration in valuing property. Transamerican Realty Corp. v. Clifton, 817 P.2d 1049 (Colo. App. 1991).

Subsection (5)(a) requires only that "appropriate consideration" be given to the cost approach, market approach, and income approach to appraisal when valuing property for assessment. Montrose Prop. v. Bd. of Assess. Appeals, 738 P.2d 396 (Colo. App. 1987).

However, where an assessor gave no consideration to the market or income approach to assessment of property because of financial and time constraints, the evidence did not support a conclusion that appropriate consideration was given to all three statutorily recognized approaches. Sonnenberg & Sons v. Bd. of Assess. Appeals, 768 P.2d 748 (Colo. App. 1988), aff'd in part and rev'd in part on other grounds, 797 P.2d 27 (Colo. 1990).

In valuing in accordance with constitutional and statutory requirements, the cost approach, market approach, and income approach must be considered by the assessor, but one or more of the three approaches may not be applicable in a particular case. The nature of the property may rule out consideration of one or more approaches or there may be insufficient data to allow all of the approaches to be used. 501 So. Cherry J. Venture v. Arapahoe County, 817 P.2d 583 (Colo. App. 1991).

Assessor's failure to consider income approach due to time constraints imposed in conducting major reappraisal in county, in addition to failure to adequately document market or cost approaches applied, violated statutory requirement to give "appropriate consideration" to all applicable approaches to valuation. Transamerican Realty Corp. v. Clifton, 817 P.2d 1049 (Colo. App. 1991).

In giving "appropriate consideration", assessor must consider and document all applicable approaches to valuation. Transamerican Realty Corp. v. Clifton, 817 P.2d 1049 (Colo. App. 1991).

"Appropriate consideration" of the cost approach, market approach, and income approach does not include consideration and documentation of inapplicable approaches. CF & I Steel Corp. v. Patton, 765 P.2d 586 (Colo. App. 1988), rev'd on other grounds, 785 P.2d 605 (Colo. 1990).

However, if an approach to value is applicable, it must be given appropriate consideration by the assessor, as well as by the board of assessment appeals, as the trier of fact. Home Depot USA, Inc. v. Pueblo County Bd. of Comm'rs, 50 P.3d 916 (Colo. App. 2002).

Assessor was required to give appropriate consideration to the cost, market, and income approaches to appraisal when valuing a non-producing mine undergoing reclamation that could not be classified as agricultural land. Hepp v. Boulder County Assessor, 113 P.3d 1268 (Colo. App. 2005).

Market value approach to value mandates that appraiser determine the probable sales price for property by considering what other comparable properties actually sold for in the market place at or about the date for which a value is sought. Home Federal Sav. v. Larimer County, 857 P.2d 562 (Colo. App. 1993).

The income approach is an important method for valuing office buildings, but it is not held as a matter of law that any particular approach must be used under the statutory scheme. The county assessor should determine proper valuation of taxpayer's property after appropriate consideration of the three approaches designated by the general assembly, after proper analysis of the applicable approaches, and after systematic correlation to reach a final estimate of value. 501 So. Cherry J.

Venture v. Arapahoe County, 817 P.2d 583 (Colo. App. 1991).

Actual rent generated from a lease is a valid factor to be considered in determining the actual or market value of the property for purposes of assessment. *Bd. of Assess. Appeals v. City & County of Denver*, 829 P.2d 1319 (Colo. App. 1991), *aff'd*, 848 P.2d 355 (Colo. 1993).

Assessor's technical violation of the notification and timing requirements of subsection (5)(c) that does not prejudice taxpayers' substantive rights does not justify reversal of an order of the board of assessment appeals upholding the assessor's classification of taxpayers' property. *Johnston v. Park County Bd. of Equaliz.*, 979 P.2d 578 (Colo. App. 1999).

Applicability of subsection (8)(d). Subsection (8)(d), requiring 30 sales of comparable properties within county in order to establish sales ratio for properties within that county, does not apply to the market valuation of property for property tax purposes. *Sonnenberg & Sons v. Bd. of Assess. Appeals*, 768 P.2d 748 (Colo. App. 1988), *aff'd in part and rev'd in part* on other grounds, 797 P.2d 27 (Colo. 1990).

Under subsection (9), if property is partially put to residential use and partially put to commercial hotel use, a mixed-use classification and allocation is appropriate. The primary factor to be considered in determining the proper classification for tax purposes is the actual use of the property on the relevant assessment date. *E.R. Southtech, Ltd. v. BOE*, 972 P.2d 1057 (Colo. App. 1998).

Board of assessment appeal's (BAA) ruling assigning a mixed-use classification to the subject property based on the breakdown of stays of less than 30 days and stays of 30 days or more is supported by the evidentiary record and has a reasonable basis in law. Thus, under the applicable standard of review, the BAA's classification determination will not be disturbed on review. *E.R. Southtech, Ltd. v. BOE*, 972 P.2d 1057 (Colo. App. 1998).

The determination as to the appropriate allocation percentages to be assigned to the residential and commercial uses of the property was a question of fact for the BAA to decide, based on its evaluation of the evidence presented. Because the BAA's factual determination in this regard is supported by competent and substantial evidence in the record as a whole, its ruling will not be disturbed on appeal. *E.R. Southtech, Ltd. v. BOE*, 972 P.2d 1057 (Colo. App. 1998).

Abuse of discretion by board of assessment appeals exists where board failed to consider evidence of value of similar properties in other counties in Colorado and other states for purposes of property tax assessment. *Platinum Props. v. Assess. Appeals Bd.*, 738 P.2d 34 (Colo. App. 1987).

Depreciation required to be calculated annually from the base year to the date of assess-

ment for valuing personal business property. *BQP Indus. v. State Bd. of Equaliz.*, 694 P.2d 337 (Colo. App. 1984).

Cap based on cost approach to the appraisal of personal property in subsection (13) does not apply to public utility. Division of property taxation reasonably interpreted provision as applying to cable companies but not a public utility that provided similar service, and this interpretation did not violate the constitutional guarantees of uniform taxation and equal protection. *Qwest Corp. v. Colo. Div. of Prop. Taxation*, ___ P.3d ___ (Colo. App. 2011).

The assessor and the board of assessment appeals are unambiguously required to give consideration to the factors set forth in subsection (14)(b), when determining the actual value of vacant land using the market approach. The assessor may not avoid this requirement by claiming that 80% of the lots within the "market area" had been "developed". When determining whether 80% of the lots of the subdivision within which the vacant land is located have been sold, some general concept of a "market area" may not be substituted for the specific area included within the boundaries of the approved plat for that subdivision. *Sunbelt Serv. Corp. v. Bd. of Assess. Appeals*, 802 P.2d 1199 (Colo. App. 1990).

Subsection (14)(b) does not require the assessor to apply the anticipated market absorption rate. This is true even though the assessor and the property tax administrator have determined that the application of such rate is not appropriate. *El Paso County Bd. of Equaliz. v. Craddock*, 850 P.2d 702 (Colo. 1993).

Although the anticipated market absorption rate must be taken into account when assessing vacant land, other factors may lead the assessor to conclude that the application of such rate is not appropriate. *El Paso County Bd. of Equaliz. v. Craddock*, 850 P.2d 702 (Colo. 1993).

The factors listed in subsection (14)(b) must be taken into account by assessors, but the general assembly did not direct that assessors be limited to those factors. *El Paso County Bd. of Equaliz. v. Craddock*, 850 P.2d 702 (Colo. 1993).

Trial court erred in interpreting subsection (14)(b) as requiring both consideration and application of the market absorption rate. Although the anticipated market absorption rate must be considered, when assessing vacant land, its application is not mandatory. The assessor may take into account other factors, including the similarity of the tracts or their anticipated use, which may lead to the conclusion that the application of the market absorption rate is not appropriate. The assessor must document those factors, however, to allow meaningful review of its decision. *Resolution Trust Corp. v. Bd. of*

County Comm'rs of Arapahoe County, 860 P.2d 1383 (Colo. App. 1993).

Market absorption rate is intended to be used in conjunction with comparable sales data in order to insure that the time and up-front costs connected with selling a quantity of individual lots have been reflected in the valuation. Resolution Trust Corp. v. Bd. of County Comm'rs, 904 P.2d 1363 (Colo. App. 1995).

Board of assessment appeals correctly interpreted subsection (14) to include developer's profit and overhead in the cost of development which may be deducted from the valuation of vacant land. Commercial Fed. Sav. & Loan Ass'n v. Douglas County, 867 P.2d 17 (Colo. App. 1993).

Subsection (14) as in effect prior to the 1992 amendment required assessors to take indirect costs into account when valuing vacant land under the market approach. The 1992 amendment to this subsection was found to have changed, rather than clarified, the earlier version of the statute because the legislative history does not evince a clear intent to merely clarify the language of the statute. Douglas County Bd. of Equaliz. v. Fidelity Castle Pines, 890 P.2d 119 (Colo. 1995).

Subsection (14)(b), prohibiting assessors from considering the indirect costs of development in ascertaining the assessment value of vacant land under the present worth valuation method does not violate article X, § 3 of the Colorado Constitution, which requires the assessor to determine the actual value of property. Fidelity Castle Pines, Ltd. v. State, 948 P.2d 26 (Colo. App. 1997).

Subsection (14)(b) does not violate article X, § 3 of the Colorado Constitution by creating a separate class of commercial property, nor does it create an unreasonable classification of commercial property. Fidelity Castle Pines, Ltd. v. State, 948 P.2d 26 (Colo. App. 1997).

When the assessor presents evidence of all three approaches to valuation, it would impose an onerous and unnecessary burden also to require the taxpayer to provide those valuations. Because neither the constitution nor the statute imposes such a requirement, the court will not so interpret them. Principal Mut. Ins. v. Bd. of Equaliz., 890 P.2d 273 (Colo. App. 1994).

Valuation based upon assessor's formulation of an open space acquisition rate determined from a sales average of unbuildable land in the county was appropriate when the cost, market, and income approaches could not be used. Hughey v. Jefferson County Bd. of Comm'rs, 921 P.2d 76 (Colo. App. 1996).

While equalization of the basis for taxation is the end sought to be achieved by uniform laws and by uniform means and methods of assessment, perfect uniformity in actual assessment is not required under either this section or

the constitution. Crocog Company v. Arapahoe County Bd. of Equaliz., 813 P.2d 768 (Colo. App. 1990); Bishop v. Colo. Bd. of Assess. Appeals, 899 P.2d 251 (Colo. App. 1994).

Taxpayers who protest property tax assessments have the burden of proving that the assessment is incorrect. Leavell-Rio Grande v. Bd. of Assess. Appeals, 753 P.2d 797 (Colo. App. 1988); 501 So. Cherry J. Venture v. Arapahoe County, 817 P.2d 583 (Colo. App. 1991).

Property tax valuation challenge. A taxpayer has the statutory right to challenge a property tax valuation for each tax year under the protest and adjustment procedure and possibly through de novo evidentiary proceedings before the board of assessment appeals. Weingarten v. Bd. of Assess. Appeals, 876 P.2d 118 (Colo. App. 1994).

Where the record shows that the method used in determining an actual value for assessment purposes was one specified by statute, taxpayers are precluded from protesting utilization of such method. Leavell-Rio Grande v. Bd. of Assess. Appeals, 753 P.2d 797 (Colo. App. 1988).

In order to adopt the taxpayer's valuation, the court must find that the taxpayer's expert complied with the property tax administrator's guidelines. Resolution Trust Corp. v. Bd. of County Comm'rs of Arapahoe County, 860 P.2d 1383 (Colo. App. 1993).

Where neighboring property was erroneously assessed during one tax year and the assessment was later corrected, complaining taxpayer has no standing to seek an order mandating a reassessment of the parcel erroneously assessed, and the court lacks authority to grant such relief. Crocog Company v. Arapahoe County Bd. of Equaliz., 813 P.2d 768 (Colo. App. 1990); Bishop v. Colo. Bd. of Assess. Appeals, 899 P.2d 251 (Colo. App. 1994).

Subsection (5) reflects legislative intent to allow reclassification upon a change of actual use. Nothing in the statute indicates that the provisions of subsection (5) are inapplicable to residential real property. Mission Viejo v. Douglas Cty. Bd. of Equaliz., 881 P.2d 462 (Colo. App. 1994).

Abandoned and uninhabited structure that did not contribute to the value of the property should be disregarded rather than valued separately. Resolution Trust Corp. v. Bd. of County Comm'rs of Arapahoe County, 860 P.2d 1383 (Colo. App. 1993).

Abandoned farmhouse on otherwise vacant parcel was "minor structure" within the meaning of administrative guidelines defining vacant land for purposes of determining whether the market absorption rate applied to the parcel. Resolution Trust Corp. v. Bd. of County Comm'rs, 904 P.2d 1363 (Colo. App. 1995).

Collateral estoppel does not bind the assessor with respect to property tax exemptions

except as to the tax year actually at issue in the prior administrative proceedings. *Guest Mansions, Inc. v. Arapahoe County Bd. of Equaliz.*, 899 P.2d 944 (Colo. App. 1995).

Trial court did not err in accepting mass appraisal method of valuation in valuing 20 vacant residential lots. *C.P. & Son v. Bd. of County Comm'rs*, 953 P.2d 1303 (Colo. App. 1998).

Tax-exempt areas outside building footprints at a federally funded public airport were properly excluded under subsection (17)(a)(II)(B) from valuation of leased parcels that were taxable possessory interests. Such

areas are to be included in the valuation of a possessory interest in tax-exempt property only if the holder of the possessory interest has an exclusive right to possess and use the areas that is absolute and the areas included paved lanes running to and from runways, terminals, aircraft hangars, and other facilities that the holder could not exclude others from using under the terms of the lease. *Denver jetCenter, Inc. v. Arapahoe County Bd. of Equaliz.*, 148 P.3d 228 (Colo. App. 2006).

Applied in *Golden Gate Dev. v. Gilpin Cty. Bd.*, 856 P.2d 72 (Colo. App. 1993).

39-1-103.5. Restrictions on information. The state board of equalization or the administrator shall not require any person to furnish financial information concerning commercial or industrial property, except as to the value of the real property for rental purposes only. This section shall not apply to public utilities.

Source: L. 77: Entire section added, p. 1731, § 3, effective June 20.

39-1-104. Valuation for assessment - definitions. (1) The valuation for assessment of all taxable property in the state shall be twenty-nine percent of the actual value thereof as determined by the assessor and the administrator in the manner prescribed by law, and such percentage shall be uniformly applied, without exception, to the actual value, so determined, of the various classes and subclasses of real and personal property located within the territorial limits of the authority levying a property tax, and all property taxes shall be levied against the aggregate valuation for assessment resulting from the application of such percentage. This subsection (1) shall not apply to residential real property, producing mines, and lands or leaseholds producing oil or gas.

(1.5) Residential real property shall be valued for assessment at twenty-one percent of its actual value, except as provided in section 39-1-104.2.

(2) Repealed.

(3) "Valuation for assessment", as used in this section and in articles 1 to 13 of this title, means the same as the term "assessed valuation" as that term may appear in the laws of this state.

(4) Except as provided in section 39-7-109, nonproducing severed mineral interests are to be valued at twenty-nine percent of actual value in the same manner as other real property. Such valuation shall be determined by the assessing officer only upon preponderant evidence shown by such officer that the cost approach, market approach, and income approach result in uniform and just and equal valuation.

(5) to (10.1) Repealed.

(10.2) (a) Except as otherwise provided in subsection (12) of this section, beginning with the property tax year which commences January 1, 1989, a reassessment cycle shall be instituted with each cycle consisting of two full calendar years. At the beginning of each reassessment cycle, the level of value to be used during the reassessment cycle in the determination of actual value of real property in any county of the state as reflected in the abstract of assessment for each year in the reassessment cycle shall advance by two years over what was used in the previous reassessment cycle; except that the level of value to be used for the years 1989 and 1990 shall be the level of value for the period of one and one-half years immediately prior to July 1, 1988; except that, if comparable valuation data is not available from such one-and-one-half-year period to adequately determine the level of value for a class of property, the period of five years immediately prior to July 1, 1988, shall be utilized to determine the level of value. Said level of value shall be adjusted to the final day of the data gathering period.

(b) During the two years of each reassessment cycle, in preparation for implementation in the succeeding reassessment cycle, the respective assessors shall conduct revaluations of

all taxable real property utilizing the level of value for the period which will be used to determine actual value in such succeeding reassessment cycle and the manuals and associated data published for the period which will be used to determine actual value in such succeeding reassessment cycle.

(c) Repealed.

(d) For the purposes of this article and article 9 of this title, "level of value" means the actual value of taxable real property as ascertained by the applicable factors enumerated in section 39-1-103 (5) for the one-and-one-half-year period immediately prior to July 1 immediately preceding the assessment date for which the administrator is required by this article to publish manuals and associated data. Beginning with the property tax year commencing January 1, 1999, if comparable valuation data is not available from such one-and-one-half-year period to adequately determine such actual value for a class of property, "level of value" means the actual value of taxable real property as ascertained by said applicable factors for such one-and-one-half-year period, the six-month period immediately preceding such one-and-one-half-year period, and as many preceding six-month periods within the five-year period immediately prior to July 1 immediately preceding the assessment date as are necessary to obtain adequate comparable valuation data. Said level of value shall be adjusted to the final day of the data-gathering period.

(e) Repealed.

(10.3) Repealed.

(11) (I) It is the intent of the general assembly, as manifested in subsection (10.2) of this section, that, when a change occurs in reassessment cycles as prescribed in said subsection, new manuals and associated data will be published by the administrator, pursuant to section 39-2-109 (1) (e), and that said manuals and associated data and the level of value for the year that said manuals and associated data are published shall be utilized by assessors in the manner described in subsection (10.2) of this section for determining the actual value of real property in each county of the state.

(II) The general assembly hereby further finds and declares that it is the intent of paragraph (b) of this subsection (11) to comply with the provisions of section 3 of article X of the state constitution, including the provision which requires the enactment of "general laws, which shall prescribe such methods and regulations as shall secure just and equalized valuations for assessments of all real and personal property"; to reduce the confusion of the owners of taxable property within the state concerning assessment procedures and valuations of such property; to achieve valuations for assessment which represent the current value of such property to the extent which is equitably and practically possible; and to minimize the costs associated with achieving such current valuations for assessment.

(b) (I) The provisions of subsection (10.2) of this section are not intended to prevent the assessor from taking into account, in determining actual value for the years which intervene between changes in the level of value, any unusual conditions in or related to any real property which would result in an increase or decrease in actual value. If any real property has not been assessed at its correct level of value, the assessor shall revalue such property for the intervening year so that the actual value of such property will be its correct level of value; however, the assessor shall not revalue such property above or below its correct level of value, except as necessary to reflect the increase or decrease in actual value attributable to an unusual condition. For the purposes of this paragraph (b) and except as otherwise provided in this paragraph (b), an unusual condition which could result in an increase or decrease in actual value is limited to the installation of an on-site improvement, the ending of the economic life of an improvement with only salvage value remaining, the addition to or remodeling of a structure, a change of use of the land, the creation of a condominium ownership of real property as recognized in the "Condominium Ownership Act", article 33 of title 38, C.R.S., any new regulations restricting or increasing the use of the land, or a combination thereof, the installation and operation of surface equipment relating to oil and gas wells on agricultural land, any detrimental acts of nature, and any damage due to accident, vandalism, fire, or explosion. When taking into account such unusual conditions which would increase or decrease the actual value of a property, the assessor must relate such changes to the level of value as if the conditions had existed at that time.

(II) The creation of a condominium ownership of real property by the conversion of an existing structure shall be taken into account as an unusual condition as provided for in subparagraph (I) of this paragraph (b) by the assessor, when at least fifty-one percent of the condominium units, as defined in section 38-33-103 (1), C.R.S., in a multiunit property subject to condominium ownership have been sold and conveyed to bona fide purchasers and deeds have been recorded therefor.

(c) Repealed.

(12) (a) For the property tax years commencing on or after January 1, 1987, producing mines shall be valued for assessment solely pursuant to article 6 of this title.

(b) For the property tax years commencing on or after January 1, 1987, oil and gas leaseholds and lands shall be valued for assessment solely pursuant to section 39-7-102.

(c) Repealed.

(12.1) Repealed.

(12.2) (a) Except as provided in subsection (12) of this section, for property tax years commencing on or after January 1, 1987, the requirement stated in subsections (10.2) and (11) of this section that the actual value of real property be determined according to a specified year's level of value and manuals and associated data published by the administrator for said specified year pursuant to section 39-2-109 (1) (e) shall apply to the assessment of all classes of real property, including but not limited to the following classes of real property:

(I) (Deleted by amendment, L. 87, p. 1390, § 2, effective April 1, 1987.)

(II) (Deleted by amendment, L. 87, p. 1392, § 2, effective April 1, 1987.)

(III) Operating property and plants of public utilities; and

(IV) Agricultural land.

(V) (Deleted by amendment, L. 87, p. 1385, § 1, effective June 20, 1987.)

(b) This subsection (12.2) shall take effect January 1, 1987.

(12.3) (a) (I) The actual value of personal property shall be determined by appropriate consideration of such of the three approaches specified in section 39-1-103 (5) (a) as are applicable to the appraisal of such property. Subject to review and approval pursuant to section 39-2-109 (1) (e), the administrator shall prepare and publish appraisal procedures and instructions for the annual appraisal of such property that will include a factor or factors to adjust the actual value for the current year of assessment to the level of value applicable to real property.

(II) In determining actual value, depreciation attributable to age shall not exceed that for the actual age of the property on the assessment date. Physical, functional, and economic obsolescence shall be considered in determining actual value.

(b) Repealed.

(12.4) For property tax years commencing on and after January 1, 1987, the requirement stated in subsections (10.2) to (11) of this section that the actual value of real property be determined according to a specified year's level of value and manuals and associated data published by the administrator for said specified year pursuant to section 39-2-109 (1) (e) shall not apply to the assessment of producing coal mines and other lands producing nonmetallic minerals.

(13) to (15) Repealed.

(16) (a) During each property tax year, the director of research of the legislative council shall contract with a private person for a valuation for assessment study to be conducted as set forth in this subsection (16). The study shall be conducted in all counties of the state to determine whether or not the assessor of each county has, in fact, used all manuals, formulas, and other directives required by law to arrive at the valuation for assessment of each and every class of real and personal property in the county. The person conducting the study shall sample each class of property in a statistically valid manner, and the aggregate of such sampling shall equal at least one percent of all properties in each county of the state. The sampling shall show that the various areas, ages of buildings, economic conditions, and uses of properties have been sampled. Such study shall be completed, and a final report of the findings and conclusions thereof shall be submitted to the state board of equalization, by September 15 of the year in which the study is conducted.

(b) During each property tax year, beginning with the property tax year which commences January 1, 1985, in addition to the requirements set forth in paragraph (a) of this subsection (16), the study shall set forth the aggregate valuation for assessment of each county for the year in which the study is conducted.

(c) The person conducting any valuation for assessment study pursuant to this subsection (16) and his employees shall, during the term of his contract, have access to any document in the custody of the administrator or an assessor, including, but not limited to, such documents as are held pursuant to sections 39-4-103, 39-5-120, and 39-14-102 (1) (c). The penalties in section 39-1-116 apply against the divulging at any time of any confidential information obtained pursuant to this paragraph (c).

(d) Repealed.

Source: L. 64: R&RE, p. 676, § 1. **C.R.S. 1963:** § 137-1-4. **L. 65:** p. 1096, § 2. **L. 67:** p. 946, § 5. **L. 70:** pp. 380, 388, §§ 10, 28. **L. 73:** p. 1430 § 1. **L. 75:** (5) and (6) added, pp. 863, 1474, §§ 2, 1, effective July 1; (7) added, p. 1454, § 1, effective July 30. **L. 76:** (9) added, p. 755, § 5, effective July 1; (8) added, p. 755, § 4, effective January 1, 1977. **L. 77:** (10) R&RE and (11) and (12) added, pp. 1731, 1732, §§ 4, 5, effective June 20. **L. 79:** (13) added, p. 1329, § 2, effective May 8; (6) R&RE and (14) added, pp. 1403, 1327, §§ 1, 4, effective July 1; (2) amended, p. 1402, § 1, effective January 1, 1980. **L. 80:** (10) amended, p. 714, § 1, effective February 29; (9) amended, p. 711, § 1, effective April 16. **L. 81:** (13)(b) amended, p. 1836, § 1, effective June 4; (9)(a), (10)(a), (10)(b), and IP(12) amended, p. 1830, § 2, effective June 12; (12)(c), (12)(d), (12)(g), and (12)(h) amended, pp. 1848, 1854, §§ 4, 2, effective January 1, 1982; (16) added, p. 1397, § 8, effective January 1, 1983. **L. 82:** (11)(b) amended, p. 553, § 1, effective May 3; (16) amended, p. 457, § 2, effective January 1, 1983. **L. 83:** (2), (7), and (12.3)(b) repealed and (12.3)(a)(I) and (16) amended, pp. 1485, 1482, §§ 11, 3, effective April 22; (10), (11)(a), (11)(b)(I), and (12)(h) amended and (10.1), (12.1), and (12.2) added, pp. 1494, 1495, §§ 1, 2, effective April 28; (5) repealed, p. 2081, § 1, effective January 1, 1984. **L. 84:** (15) repealed, p. 999, § 3, effective January 1; (10), (10.1)(a), (12)(h), (12.1), IP(12.2)(a), and (12.2)(b) amended, p. 988, § 1, effective February 23. **L. 85:** (4) amended, p. 1212, § 8, effective May 9. **L. 86:** (16)(a) amended, p. 1101, § 1, effective March 26. **L. 87:** (16)(c) added, p. 1417, § 1, effective March 13; (12)(a) RC&RE and (12.2)(a) amended, p. 1390, §§ 1, 2, effective April 1; (12)(b) RC&RE and (12.2)(a) amended, p. 1392, §§ 1, 2, effective April 1; (1.5) added, p. 1384, § 1, effective April 16; (6), (13), and (14) repealed, p. 1304, § 1, effective May 20; (9)(a), (9)(b), and (10) repealed, (10.1) R&RE, (11)(b)(I) and (12.2)(a) amended, and (12)(c) and (12.4) added, pp. 1388, 1386, 1385, §§ 6(1), 3, 1, 5, 2, effective June 20; (1) amended, p. 1383, § 1, effective July 10; (10.3) added, p. 1387, § 4, effective January 1, 1991; (9)(d) and (11)(c) added by revision, p. 1388, § 6(2). **L. 88:** (8) repealed, (9)(c), (9)(d), (10.1)(b), (10.3)(a), (11)(a), (11)(b)(I), (11)(c), and (12.3)(a) amended, (10.1)(d) R&RE, and (10.2) added, pp. 1275, 1269, 1273, 1270, §§ 14, 5, 6, 5, effective May 29; (1.5) R&RE, (16)(c) amended, and (16)(d) added, pp. 1279, 1282, §§ 2, 5, effective January 1, 1989; **L. 89:** (11)(b)(I) amended, p. 1450, § 2, effective June 7; (10.3)(c) amended, p. 1644, § 8, effective January 1, 1991. **L. 90:** (16)(d) repealed, p. 1840, § 19, effective May 31; (12)(c) repealed and (16)(a) and (16)(c) amended, pp. 1705, 1689, §§ 41, 4, effective June 9. **L. 91:** (10.2)(c), (10.3)(a), (11)(a)(I), (11)(b)(I), and (12.4) amended and (10.2)(e) and (11)(c) repealed, pp. 2003, 2005, §§ 1, 5, effective June 6. **L. 92:** (11)(b)(I) amended, p. 2212, § 10, effective June 3. **L. 93:** (7) repealed, p. 1689, § 8, effective June 6. **L. 94:** (11)(b)(I) amended, p. 309, § 1, effective March 22. **L. 95:** (10.2)(c) and (10.3) repealed, p. 7, § 1, effective March 9. **L. 96:** (11)(a)(I), IP(12.2)(a), (12.3)(a)(I), and (12.4) amended, pp. 1198, 1199, §§ 1, 2, effective June 1. **L. 99:** (10.2)(d) amended, p. 202, § 1, effective August 4. **L. 2002:** (16)(a) amended, p. 861, § 1, effective August 7. **L. 2005:** IP(12.2)(a) amended, p. 781, § 72, effective June 1.

Editor's note: (1) Subsection (12.1) provided for the repeal of subsections (12) and (12.1), effective January 1, 1987. (See L. 84, p. 988.)

(2) Subsection (9)(d) provided for the repeal of subsections (9)(c) and (9)(d), effective January 1, 1989. (See L. 88, p. 1269.)

(3) Subsection (10.1)(d) provided for the repeal of subsection (10.1), effective January 1, 1991. (See L. 88, p. 1273.)

Cross references: For constitutional provisions concerning taxation, see article X of the state constitution; for the provision that sets the valuation for assessment of residential real property at 21%, see § 3 (1)(b) of article X of the state constitution.

ANNOTATION

Law reviews. For article, "Property Tax Assessments in Colorado", see 12 Colo. Law. 563 (1983). For article, "Appealing Property Tax Assessments", see 15 Colo. Law. 798 (1986). For article, "Delinquent Oil and Gas Ad Valorem Taxes: Protecting Property Interests", see 16 Colo. Law. 798 (1987).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

General assembly may constitutionally classify movable structures differently than conventional residences for tax purposes. *Am. Mobile Home Ass'n v. Dolan*, 191 Colo. 433, 553 P.2d 758 (1976).

When cyclical revaluation plan deemed unconstitutional. A cyclical revaluation plan is violative of constitutional equality and uniformity standards only where its implementation results in intentional discrimination, arbitrary action, constructive fraud, or grossly and relatively unfair assessments. *Nuttall v. Leffingwell*, 193 Colo. 137, 563 P.2d 356 (1977).

This section does not constitute retrospective legislation in violation of constitution. A change in the method of valuation during the year for which the assessment was made does not constitute retrospective legislation. *Martin v. Bd. of Assess. Appeals*, 707 P.2d 348 (Colo. 1985) (decided under law in effect prior to 1983 amendment).

It is duty of tax assessor to tax uniformly. *Citizens' Comm. for Fair Prop. Taxation v. Warner*, 127 Colo. 121, 254 P.2d 1005 (1953).

All taxable property need not be revalued before individual revaluations are entered on the tax rolls. *Nuttall v. Leffingwell*, 193 Colo. 137, 563 P.2d 356 (1977).

Federal statute prohibiting discriminatory tax treatment of airline property under provisions of this section does not apply retroactively to property taxes assessed prior to effective date of federal statute. *State Bd. of Equaliz. v. Am. Airlines*, 773 P.2d 1033 (Colo. 1989), cert. denied, 493 U.S. 851, 110 S. Ct. 151, 105 L. Ed.2d 109 (1989).

Depreciation required to be calculated annually from the base year to the date of assessment for valuing personal business property. *BQP Industries v. State Bd. of Equaliz.*, 694 P.2d 337 (Colo. App. 1984).

Statute does not permit consideration of subsequent economic conditions in determining property's base year value. *Carrera Place*

v. Bd. of Equaliz., 761 P.2d 197 (Colo. 1988) (decided under law in effect prior to 1987 amendments).

Thus, additional hotel rooms that had not yet been constructed during the base period could not be considered in calculating the occupancy rate used to determine the actual value of a hotel for purposes of property taxation. *Padre Resort, Inc. v. Jefferson County Bd. of Equaliz.*, 30 P.3d 813 (Colo. App. 2001).

It is proper for the board to consider evidence of other sales of comparable property within the base period which were similarly subject to long-term leases. *Bd. of Assess. Appeals v. City and County of Denver*, 829 P.2d 1319 (Colo. App. 1991), *aff'd*, 848 P.2d 355 (Colo. 1993).

Evidence of property tax valuations of the property for prior tax years is relevant to valuation issues concerning the current tax year, especially when the prior tax year is in the same reassessment cycle and the valuation is determined using the same base period. *Weingarten v. Bd. of Assess. Appeals*, 876 P.2d 118 (Colo. App. 1994).

Comparative sales data must be adjusted for time. In case where property owner appealed county assessor's valuation of the property to the board of assessment appeals, the board erred in reaching an alternative valuation without applying a time adjustment to the comparable sales data on which it relied. Adjustment for time under subsections (10.2)(a) and (10.2)(d) is not discretionary, but mandatory. *Kidder v. Chaffee County Bd. of Equaliz.*, ___ P.3d ___ (Colo. App. 2011).

Although an assessor is not prevented from taking into account any unusual conditions related to real property which would result in an increase or decrease in actual value and may revalue property for an intervening year to rectify an incorrect base value assessment, an assessor may not revalue a property in an intervening year that has been correctly assessed, except as necessary to reflect the increase or decrease in actual value attributable to an unusual condition. *Leavell-Rio Grande v. Bd. of Assess. Appeals*, 753 P.2d 797 (Colo. App. 1988).

Unusual conditions affecting actual value are factors for consideration by the assessor in assessing real property. Depreciation factors apply only to personal property. *CF & I Steel Corp. v. Patton*, 765 P.2d 586 (Colo. App. 1988),

rev'd on other grounds, 785 P.2d 605 (Colo. 1990).

“Unusual conditions” are set forth in two distinct provisions, of which one is limited and exclusive and the other is broadly inclusive. Where a contract for purchase and sale of the subject property was entered into in an intervening year, resulting in a difference in valuation of more than ten percent when compared with the valuation in effect during the normally applicable base period, evidence of the sale price was relevant under this section and should have been considered. *Roberts v. Bd. of Assess. Appeals*, 883 P.2d 588 (Colo. App. 1994).

“Unusual conditions” provisions apply to individual properties, not only to all properties in an entire neighborhood of like properties. *Roberts v. Bd. of Assess. Appeals*, 883 P.2d 588 (Colo. App. 1994).

Evidence relating to the amount stipulated to in adjudicatory proceedings and not to the assessor's original base period valuation was irrelevant as a matter of law to the unusual condition exception. *Lowe Denver Hotel Ass'n v. Arapahoe County Bd. of Equaliz.*, 890 P.2d 257 (Colo. App. 1995).

The cost to cure environmental contamination, when mandated by a governmental entity, should be deducted from the valuation of the property for ad valorem tax purposes. *E.I. du Pont de Nemours & Co. v. Douglas County Bd. of Equaliz.*, 75 P.3d 1129 (Colo. App. 2003).

E.I. du Pont de Nemours & Co. cited above does not address the exact manner in which governmentally ordered remediation costs to cure environmental contamination are to be deducted under the income approach, nor does it mandate any specific methodology, or require the deduction of the entire cost of remediation. Here, methodology of estimating annual income, subtraction of an annual cost to cure, and application of a capitalization rate to arrive at a taxable value of property capable of generating income is in conformity with the direct capitalization method of the income approach and supported by competent evidence. *Microsemi Corp.*

v. Broomfield County Bd. of Equaliz., 200 P.3d 1123 (Colo. App. 2008).

A shut down of a portion of a plant does not constitute a change in the use of the land. *LaDuke v. CF & I Steel Corp.*, 785 P.2d 605 (Colo. 1990).

The general assembly intended to authorize assessors to make “corrective” intervening year revaluations only when the assessor's original base period valuation for the first year of the reassessment cycle is subsequently asserted to be incorrect and, therefore, in need of correction. *Lowe Denver Hotel Ass'n v. Arapahoe County Bd. of Equaliz.*, 890 P.2d 257 (Colo. App. 1995).

Statute does not authorize assessors to make intervening revaluations when the valuation for the first year of the cycle has been determined in adjudicatory proceedings resulting from taxpayer protests or appeals. *Lowe Denver Hotel Ass'n v. Arapahoe County Bd. of Equaliz.*, 890 P.2d 257 (Colo. App. 1995).

Section 39-1-103 (8)(a)(I), not subsection (12.3) of this section, applies to the valuation of real property. Since the 18-month time limitation for information used in property valuation applies exclusively to real property, the computer pricing guides used by the taxpayer need not conform to those time limitations. *Bd. of County Comm'rs v. IBM Credit Corp.*, 888 P.2d 250 (Colo. 1995).

Obsolescence may be a relevant factor in determining the actual value of personal property. *IBM Credit Corp. v. Bd. of County Comm'rs*, 870 P.2d 535 (Colo. App. 1993).

Under subsection (12.3), if an approach to value is applicable, it must be given appropriate consideration by the assessor, as well as by the board of assessment appeals, as the trier of fact. *Home Depot USA, Inc. v. Pueblo County Bd. of Comm'rs*, 50 P.3d 916 (Colo. App. 2002).

Applied in *First Nat'l Bank v. Bd. of Comm'rs*, 36 Colo. 265, 84 P. 1111 (1906); *Bd. of County Comm'rs v. Bd. of Assess. Appeals*, 628 P.2d 156 (Colo. App. 1981).

39-1-104.1. Implementation costs - annual revaluation. (Repealed)

Source: L. 87: Entire section added, p. 1389, § 10, effective June 21. **L. 95:** Entire section repealed, p. 9, § 5, effective March 9.

39-1-104.2. Legislative declaration - adjustment of residential rate. (1) As used in this section, unless the context otherwise requires:

(a) “Residential rate” means the ratio of valuation for assessment for residential real property fixed in accordance with this section.

(b) “Target percentage” means the percentage of aggregate statewide valuation for assessment represented by the valuation for assessment which is attributable to residential real property in the year immediately preceding the year in which a change in the level of value occurs.

(2) After careful consideration of all available information, the general assembly

hereby finds and declares that the action of the first session of the fifty-sixth general assembly which set the ratio of valuation for assessment for residential real property at eighteen percent has produced a deviation from the intent of section 3 of article X of the state constitution which ensures that the percentage of the aggregate statewide valuation for assessment which is attributable to residential real property shall remain the same as it was in the year immediately preceding the year in which a change occurs in the level of value used in determining actual value. Therefore, the general assembly finds that legislation is necessary for the following purposes: To adjust the residential rate for 1988; to ensure that deviations from the constitutional mandate set forth in section 3 of article X of the state constitution shall not be perpetuated into this or any future year; and to provide a process for future adjustments in the ratio of valuation for assessment for residential real property.

(3) (a) The general assembly, pursuant to the authority granted in section 3 of article X of the state constitution, finds and declares that, for the property tax years commencing on or after January 1, 1987, but before January 1, 1989, the percentage of aggregate statewide valuation for assessment which is attributable to residential real property fails to remain as it was in the property tax year commencing January 1, 1986, when the aggregate statewide valuation for assessment was based on the 1985 aggregate statewide valuation for assessment plus the increased valuation for assessment attributable to new construction and to increased volume of mineral and oil and gas production which occurred during 1986. Therefore, for the property tax year commencing January 1, 1988, the ratio of valuation for assessment for residential real property shall be sixteen percent of actual value.

(b) The general assembly, pursuant to the authority granted in section 3 of article X of the state constitution, finds and declares that, for the property tax years commencing on or after January 1, 1989, but before January 1, 1991, the percentage of aggregate statewide valuation for assessment which is attributable to residential real property fails to remain as it was in the property tax year commencing January 1, 1988, when the aggregate statewide valuation for assessment was based on the 1987 aggregate statewide valuation for assessment. Therefore, the administrator having determined pursuant to subsection (4) of this section that the target percentage is 44.51 percent, for the property tax years commencing on or after January 1, 1989, but before January 1, 1991, the ratio of valuation for assessment for residential real property shall be fifteen percent of actual value.

(c) The general assembly, pursuant to the authority granted in section 3 of article X of the state constitution, finds and declares that, for the property tax years commencing on or after January 1, 1991, but before January 1, 1993, the percentage of aggregate statewide valuation for assessment which is attributable to residential real property fails to remain as it was in the property tax year commencing January 1, 1990, when the aggregate statewide valuation for assessment was based on the 1989 aggregate statewide valuation for assessment. Therefore, the administrator having determined pursuant to subsection (4) of this section that the target percentage is 44.57 percent, for the property tax years commencing on or after January 1, 1991, but before January 1, 1993, the ratio of valuation for assessment for residential real property shall be 14.34 percent of actual value.

(d) Pursuant to the authority granted in section 3 of article X of the state constitution, the general assembly finds and declares that, for the property tax years commencing on or after January 1, 1993, but before January 1, 1995, the percentage of aggregate statewide valuation for assessment which is attributable to residential real property will fail to remain as it was in the property tax year commencing January 1, 1992, when the aggregate statewide valuation for assessment was based on the 1991 aggregate statewide valuation for assessment. Therefore, the administrator having determined pursuant to subsection (4) of this section that the target percentage is 44.73 percent, the ratio of valuation for assessment for residential real property shall be 12.86 percent of actual value for the property tax years commencing on or after January 1, 1993, but before January 1, 1995.

(e) Pursuant to the authority granted in section 3 of article X of the state constitution, the general assembly finds and declares that, for the property tax years commencing on or after January 1, 1995, but before January 1, 1997, the percentage of aggregate statewide valuation for assessment that is attributable to residential real property will fail to remain as it was in the property tax year commencing January 1, 1994, when the aggregate statewide valuation for assessment was based on the 1993 aggregate statewide valuation for

assessment. Therefore, the administrator having determined pursuant to subsection (4) of this section that the target percentage is 45.29 percent, the ratio of valuation for assessment for residential real property shall be 10.36 percent of actual value for the property tax years commencing on or after January 1, 1995, but before January 1, 1997.

(f) Pursuant to the authority granted in section 3 of article X of the state constitution, the general assembly finds and declares that, for the property tax years commencing on or after January 1, 1997, but before January 1, 1999, the percentage of aggregate statewide valuation for assessment that is attributable to residential real property will fail to remain as it was in the property tax year commencing January 1, 1996, when the aggregate statewide valuation for assessment was based on the 1995 aggregate statewide valuation for assessment. Therefore, the administrator having determined pursuant to subsection (4) of this section that the target percentage is 46.17 percent, the ratio of valuation for assessment for residential real property shall be 9.74 percent of actual value for the property tax years commencing on or after January 1, 1997, but before January 1, 1999.

(g) Pursuant to the authority granted in section 3 of article X of the state constitution, the general assembly finds and declares that, for the property tax years commencing on or after January 1, 1999, but before January 1, 2001, the percentage of aggregate statewide valuation for assessment that is attributable to residential real property will fail to remain as it was in the property tax year commencing January 1, 1998, when the aggregate statewide valuation for assessment was based on the 1997 aggregate statewide valuation for assessment. Therefore, the administrator having determined pursuant to subsection (4) of this section that the target percentage is 46.49 percent, the ratio of valuation for assessment for residential real property shall be 9.74 percent of actual value for the property tax years commencing on or after January 1, 1999, but before January 1, 2001.

(h) Pursuant to the authority granted in section 3 of article X of the state constitution, the general assembly finds and declares that, for the property tax years commencing on or after January 1, 2001, but before January 1, 2003, the percentage of aggregate statewide valuation for assessment that is attributable to residential real property will fail to remain as it was in the property tax year commencing January 1, 2000, when the aggregate statewide valuation for assessment was based on the 1999 aggregate statewide valuation for assessment. Therefore, the administrator having determined pursuant to subsection (4) of this section that the target percentage is 46.61 percent, the ratio of valuation for assessment for residential real property shall be 9.15 percent of actual value for the property tax years commencing on or after January 1, 2001, but before January 1, 2003.

(i) Pursuant to the authority granted in section 3 of article X of the state constitution, the general assembly finds and declares that, for the property tax years commencing on or after January 1, 2003, but before January 1, 2005, the percentage of aggregate statewide valuation for assessment that is attributable to residential real property will not remain as it was in the property tax year commencing January 1, 2002, when the aggregate statewide valuation for assessment was based on the 2001 aggregate statewide valuation for assessment. Therefore, the administrator having determined pursuant to subsection (4) of this section that the target percentage is 47.08 percent, the ratio of valuation for assessment for residential real property shall be 7.96 percent of actual value for the property tax years commencing on or after January 1, 2003, but before January 1, 2005.

(j) Pursuant to the authority granted in section 3 of article X of the state constitution, the general assembly finds and declares that, for the property tax years commencing on or after January 1, 2005, but before January 1, 2007, the percentage of aggregate statewide valuation for assessment that is attributable to residential real property will not remain as it was in the property tax year commencing January 1, 2004, when the aggregate statewide valuation for assessment was based on the 2003 aggregate statewide valuation for assessment. Therefore, the administrator having determined pursuant to subsection (4) of this section that the target percentage is 47.22 percent, the ratio of valuation for assessment for residential real property shall be 7.96 percent of actual value for the property tax years commencing on or after January 1, 2005, but before January 1, 2007.

(k) Pursuant to the authority granted in section 3 of article X of the state constitution, the general assembly finds and declares that, for the property tax years commencing on or after January 1, 2007, but before January 1, 2009, the percentage of aggregate statewide

valuation for assessment that is attributable to residential real property will not remain as it was in the property tax year commencing January 1, 2006, when the aggregate statewide valuation for assessment was based on the 2005 aggregate statewide valuation for assessment. Therefore, the administrator having determined pursuant to subsection (4) of this section that the target percentage is 47.43 percent, the ratio of valuation for assessment for residential real property shall be 7.96 percent of actual value for the property tax years commencing on or after January 1, 2007, but before January 1, 2009.

(l) Pursuant to the authority granted in section 3 of article X of the state constitution, the general assembly finds and declares that, for the property tax years commencing on or after January 1, 2009, but before January 1, 2011, the percentage of aggregate statewide valuation for assessment that is attributable to residential real property will not remain as it was in the property tax year commencing January 1, 2008, when the aggregate statewide valuation for assessment was based on the 2007 aggregate statewide valuation for assessment. Therefore, the administrator having determined pursuant to subsection (4) of this section that the target percentage is 46.82 percent, the ratio of valuation for assessment for residential real property shall be 7.96 percent of actual value for the property tax years commencing on or after January 1, 2009, but before January 1, 2011.

(m) Pursuant to the authority granted in section 3 of article X of the state constitution, the general assembly finds and declares that, for the property tax years commencing on or after January 1, 2011, but before January 1, 2013, the percentage of aggregate statewide valuation for assessment that is attributable to residential real property will not remain as it was in the property tax year commencing January 1, 2010, when the aggregate statewide valuation for assessment was based on the 2009 aggregate statewide valuation for assessment. Therefore, the administrator having determined pursuant to subsection (4) of this section that the target percentage is 46.53 percent, the ratio of valuation for assessment for residential real property shall be 7.96 percent of actual value for the property tax years commencing on or after January 1, 2011, but before January 1, 2013.

(4) To ensure that in present and future years there is no deviation from the intent of section 3 of article X of the state constitution:

(a) Commencing January 1, 1989, for each year in which there is a change in the level of value, the administrator shall determine the target percentage in order to ensure that the percentage of the aggregate statewide valuation for assessment which is attributable to residential real property remains the same as it was in the year immediately preceding the year in which such change occurs. In determining the target percentage, the administrator shall use data concerning valuation for assessment which has been adjusted to eliminate the effects of having rounded the then current residential rate to the nearest one-hundredth of one percent. The net increase in valuation for assessment attributable to new construction and to the net increase in the volume of mineral and oil and gas production shall be added to the valuation for assessment, as so adjusted. The sum so determined shall be the basis on which the target percentage is calculated.

(b) In order to implement the provisions of paragraph (a) of this subsection (4), the administrator shall use data concerning the 1987 valuation for assessment when the aggregate statewide valuation for assessment was based on the 1985 aggregate statewide valuation for assessment plus the net increase in valuation for assessment attributable to new construction and to the net increase in the volume of mineral and oil and gas production which occurred during 1986. The administrator shall add the 1988 net increase in valuation for assessment attributable to new construction and the net increase in the volume of mineral and oil and gas production to the 1987 aggregate statewide valuation for assessment, and the resulting amounts shall be the basis for determining the target percentage for 1989.

(5) (a) Commencing January 1, 1989, for each year in which there is a change in the level of value used in determining actual value, the general assembly, pursuant to the authority granted in section 3 of article X of the state constitution, shall, by law, adjust the residential rate in order that the percentage of aggregate statewide valuation for assessment which is attributable to residential real property for such year equals the target percentage.

(b) The residential rate shall be based on a documented estimate of the total valuation for assessment of all taxable property in the state arrived at by projecting the percentage of

change in the level of value for each class of taxable property to all taxable property in such class in the state.

(c) The administrator shall be responsible for ensuring that a documented estimate study is completed by the division of property taxation.

(6) No later than January 15 of each year in which there is a change in the level of value used in determining actual value, the administrator shall report to the state board of equalization:

(a) An estimate of the total valuation for assessment of all taxable property in the state;

(b) An estimate of the percentage of aggregate statewide valuation for assessment which would be attributable to residential real property if the residential rate fixed in current law remained the same. Such estimate shall be based upon the projected valuations as determined by the documented study.

(c) The target percentage as determined under paragraph (a) of subsection (4) of this section;

(d) The projected residential rate. The rate shall be rounded to the nearest one-hundredth of one percent, and the rate shall ensure that the percentage of the aggregate statewide valuation for assessment which is attributable to residential real property shall remain as it was in the year immediately preceding the year in which such change occurs.

(7) Repealed.

Source: L. 88: Entire section added, p. 1276, § 1, effective January 1, 1989. L. 89: (3) and (7)(b) amended, p. 1450, § 3, effective June 7. L. 90: IP(7)(a) amended, p. 1689, § 5, effective June 9. L. 91: (3)(c) added and (4)(a), (6)(d), and (7)(b) amended, p. 1984, §§ 1, 2, effective April 11. L. 91, 2nd Ex. Sess.: (7)(b) amended, p. 100, § 1, effective September 25; IP(7)(a) and (7)(a)(II) amended, p. 101, § 1, effective October 7. L. 92: IP(7)(a) and (7)(b) amended, p. 2215, § 2, effective June 3. L. 93: (3)(d) added and (7) repealed, pp. 1876, 1689, §§ 1, 8, effective June 6. L. 95: (3)(e) added, p. 583, § 1, effective May 22. L. 97: (3)(f) added, p. 1149, § 1, effective May 28. L. 99: (3)(g) added, p. 505, § 1, effective April 30. L. 2001: (3)(h) added, p. 705, § 1, effective May 31. L. 2002: IP(6) amended, p. 861, § 2, effective August 7. L. 2003: (3)(i) added, p. 1970, § 1, effective May 22. L. 2005: (3)(j) added, p. 632, § 1, effective May 27. L. 2007: (3)(k) added, p. 1524, § 1, effective May 31. L. 2009: (3)(l) added, (HB 09-1360), ch. 362, p. 1875, § 1, effective June 1. L. 2011: (3)(m) added, (HB 11-1305), ch. 222, p. 956, § 1, effective May 27.

39-1-104.5. Severed mineral interest - placement on tax roll. Any owner of the surface estate from which a mineral interest has been severed, on behalf of himself and any other owners of such interest in the surface, may require the assessor of the county wherein such real estate is situate to place such severed mineral interest, without regard to value, on the tax roll of the county if the owner of the surface estate provides proof of ownership of the severed mineral interest and a record of the creation of the severed mineral interest as shown by the records of the county clerk and recorder. Proof of ownership and the record of creation of the severed mineral interest shall be provided in the form of a certificate prepared by an attorney, a title insurance company, or a title insurance agent authorized to do business in this state.

Source: L. 79: Entire section added, p. 1405, § 1, effective July 1. L. 83: Entire section amended, p. 512, § 3, effective May 16.

39-1-105. Assessment date. All taxable property, real and personal, within the state at twelve noon on the first day of January of each year, designated as the official assessment date, shall be listed, appraised, and valued for assessment in the county wherein it is located on the assessment date. Personal property shall be listed and valued separately from real property. Whenever construction of any new taxable building within the boundaries of a county occurs subsequent to the assessment date but before July 1 and such county has resolved to implement the procedures set out in section 39-5-132, such building shall be listed, appraised, and valued pursuant to section 39-5-132.

Source: L. 64: R&RE, p. 677, § 1. C.R.S. 1963: § 137-1-5. L. 85: Entire section amended, p. 1226, § 2, effective January 1, 1986. L. 86: Entire section amended, p. 1222, § 35, effective May 30.

Cross references: For property brought into the state after assessment date, see § 39-5-110; for property destroyed after the assessment date, see § 39-5-117; for the procedure for exclusion of property within a municipality from a special district and for the effect of such an exclusion order, see §§ 32-1-502 and 32-1-503.

ANNOTATION

This section does not mandate that January 1 is the date for determining tax exempt status for property owned by a charitable organization and does not address when the tax exempt status is to be determined. *Family Tree Found. v. Prop. Tax Adm'r*, 119 P.3d 581 (Colo. App. 2005).

City acquired an interest in the personal property prior to the date of the chapter 11 bankruptcy since the statute provides that a lien for ad valorem personal property taxes arises at 12 noon on the assessment date for the current year and such lien is a perpetual lien. Although the interest was an inchoate lien, the city was

allowed to perfect it after the assessment date and thus have the lien relate back to the assessment date. Therefore the personal property taxes were a prepetition secured claim. In re *W. States Distribs., Inc.*, 179 Bankr. 666 (Bankr. D. Colo. 1995).

Applied in *City & County of Denver v. Bd. of Dirs.*, 37 Colo. App. 496, 549 P.2d 1090 (1976); *Martin v. Bd. of Assess. Appeals*, 707 P.2d 348 (Colo. 1985); *Padgett v. Routt County Bd. of Equalization*, 857 P.2d 565 (Colo. App. 1993); *Mission Viejo Co. v. Bd. of Equaliz.*, 942 P.2d 1251 (Colo. App. 1996).

39-1-105.5. Reappraisal ordered based on valuation for assessment study - state school finance payments.

(1) (a) Repealed.

(b) (I) Pursuant to section 39-1-104 (16) (b) for each property tax year beginning with the property tax year which commences January 1, 1985, the annual study shall, in addition to other requirements, determine and set forth the aggregate valuation for assessment of each county for the year in which the study is conducted.

(II) (A) If the valuation for assessment of a county as reflected in its abstract for assessment for any property tax year beginning with the property tax year commencing January 1, 1985, is more than five percent below the valuation for assessment for such county as determined by the study conducted during the same property tax year, the state board of equalization shall cause to be performed a reappraisal of any class or classes which the study shows were not appraised consistent with the property tax provisions of the Colorado constitution or the statutes. Such reappraisal shall be performed during the next following year and shall be at the expense of the county. Such reappraisal shall become the county's valuation for assessment with regard to the reappraised class or classes for the year in which such reappraisal is performed.

(B) Even though a county's aggregate valuation for assessment as reflected in its abstract for assessment for any property tax year beginning with the property tax year commencing January 1, 1985, is not more than five percent below the valuation for assessment for such county as determined by the study conducted during the same property tax year, the state board of equalization shall cause to be performed a reappraisal of any class or classes which the study shows were not appraised consistent with the property tax provisions of the Colorado constitution or the statutes. Such reappraisal shall be performed during the next following year and shall be at the expense of the county. Such reappraisal shall become the county's valuation for assessment with regard to the reappraised class or classes for the year in which such reappraisal is performed.

(III) Whenever a reappraisal is ordered pursuant to subparagraph (II) of this paragraph (b), state equalization payments to school districts within the county during the year in which the reappraisal is performed shall be based upon the valuation for assessment as reflected in the county's abstract for assessment for the year prior to the year in which the reappraisal is performed. The state board of equalization shall order the county's board of

county commissioners to levy, and the board of county commissioners shall levy, an additional property tax on all taxable property within the county. Such additional property tax shall be levied at the same time as other property taxes are levied during the year in which the reappraisal is performed. Such additional property tax shall be in an amount which is sufficient to reimburse the state for the excess state equalization payments made to school districts within the county during the year in which the reappraisal is performed. The county's board of county commissioners shall reimburse the state for such excess state equalization payments. Such excess shall be that amount of the state equalization payments actually paid by the state to the county during the year in which the reappraisal is performed based on the incorrect valuation for assessment as reflected in the county's abstract for assessment for the immediately prior year which amount exceeds the state equalization payments the state would have paid during the year in which the reappraisal is performed had the valuation for assessment for the immediately prior year been determined by the assessor consistent with the provisions of the Colorado constitution and the statutes. In addition, the additional property tax shall be sufficient to pay to the state, and the board of county commissioners shall pay to the state, interest on such excess at the interest rate determined by the state banking commissioner pursuant to section 39-21-110.5.

(IV) If the valuation for assessment of a county as reflected in its abstract for assessment for any property tax year beginning with the property tax year commencing January 1, 1985, is more than five percent below the valuation for assessment for such county as determined by the study conducted during the same property tax year and if the state board of equalization fails to order a reappraisal, state equalization payments to school districts within the county during the year next following the year in which the study was performed shall be based upon the valuation for assessment for the county as reflected in the county's abstract for assessment for the year in which the study was conducted. At the same time as other property taxes are levied during the year in which such state equalization payments are made, the county's board of county commissioners shall levy an additional property tax on all taxable property within the county. Such additional property tax shall be in an amount sufficient to reimburse the state for the difference between the amount the state actually paid in state equalization payments during the year following the year in which the study was performed and what the state would have paid during such year had the state equalization payments been based on the valuation for assessment as determined by the study. The county's board of county commissioners shall reimburse the state for such difference.

(V) Any finding made in 1988 pursuant to the provisions of subparagraph (II) of this paragraph (b) shall be based primarily on data and information collected from within the county in question, except where data is lacking or deficient. If data from outside the county must be used, then that data must be from a comparable area. If any finding made utilizing the study conducted for the property tax year commencing on January 1, 1987, was based upon data and information comparing taxable property in one county with taxable property in the county subject to such finding, the state board of equalization shall revise such finding so that any orders made pursuant to the provisions of subparagraph (II) of this paragraph (b) are based solely on data and information collected from within each affected county.

(2) Any reimbursement made by a county to the state for the cost incurred by the state in reappraising any class or classes of taxable property for property tax purposes which reimbursement is required by subsection (1) of this section shall be made to the state treasurer who shall, upon receipt thereof, credit the amount of such reimbursement to the state general fund.

Source: L. 83: Entire section added, p. 1506, § 4, effective June 2. L. 84: (2) added, p. 733, § 2, effective May 11. L. 87: (1)(b)(III) amended, p. 1394, § 1, effective July 1. L. 88: (1)(b)(V) added, p. 1282, § 6, effective January 1, 1989. L. 89: (1)(b)(III) amended, p. 1451, § 4, effective June 7. L. 2004: (1)(a) repealed, p. 205, § 27, effective August 4.

39-1-106. Partial interests not subject to separate tax. For purposes of property taxation, it shall make no difference that the use, possession, or ownership of any taxable

property is qualified, limited, not the subject of alienation, or the subject of levy or distraint separately from the particular tax derivable therefrom. Severed mineral interests shall also be taxed.

Source: L. 64: R&RE, p. 677, § 1. **C.R.S. 1963:** § 137-1-6. **L. 73:** p. 1430, § 2. **L. 96:** Entire section amended, p. 1850, § 2, effective June 5. **L. 2002:** Entire section amended, p. 1008, § 2, effective August 7.

ANNOTATION

This section establishes a unity rule for the assessment of property rather than requiring assessment of the various interests in the prop-

erty. Bd. of Assess. Appeals v. City and County of Denver, 829 P.2d 1319 (Colo. App. 1991), aff'd, 848 P.2d 355 (Colo. 1993).

39-1-107. Tax liens. (1) Except as provided in section 39-3-135, the lien of general taxes for the current year, including taxes levied pursuant to section 39-5-132, shall attach to all taxable property, real and personal, at 12 noon on the assessment date.

(2) Taxes levied on real and personal property, together with any delinquent interest, advertising costs, and fees prescribed by law with respect to any such taxes as may have become delinquent, shall be a perpetual lien thereon, and such lien shall have priority over all other liens until such taxes, delinquent interest, advertising costs, and fees shall have been paid in full.

(3) Repealed.

(4) The property tax on a possessory interest in real or personal property that is exempt from taxation under this article shall be assessed to the holder of the possessory interest and collected in the same manner as property taxes assessed to owners of real or personal property; except that such property tax shall not become a lien against the property. When due, the property tax shall be a debt due from the holder of the possessory interest to the board of county commissioners for the county in which such property is located or to such other body as is authorized by law to levy property taxes, and shall be recoverable by such board or body by direct action in debt on behalf of each governmental entity for which a property tax levy has been made.

Source: L. 64: R&RE, p. 677, § 1. **C.R.S. 1963:** § 137-1-7. **L. 67:** p. 212, § 1. **L. 75:** (1) amended, p. 1462, § 1, effective January 1, 1976. **L. 83:** (3) repealed, p. 1485, § 11, effective April 22. **L. 85:** (1) amended, p. 1226, § 3, effective January 1, 1986. **L. 89:** (1) amended, p. 1482, § 5, effective April 23. **L. 92:** (2) amended, p. 2222, § 1, effective April 9. **L. 2002:** (4) added, p. 1008, § 3, effective August 7.

Editor's note: Section 39-3-135, referenced in subsection (1), was repealed, effective June 5, 1996, but has been left in for historical purposes.

Cross references: For receipts for taxes paid, see § 39-10-105; for the effect of issuance of certificate of taxes due, see § 39-10-115; for sale of tax liens, see article 11 of this title.

ANNOTATION

- I. General Consideration.
- II. The Tax Lien.
- III. Priority of Tax Lien.

I. GENERAL CONSIDERATION.

Law reviews. For article, "Taxation of Estates Pending Probate", see 6 Dicta 15 (April 1929). For article "Federal and State Tax Liens: A Question of Priority", see 12 Colo. Law. 1967 (1983). For article, "An Introduction to Tax

Liens", see 13 Colo. Law. 399 (1984). For article, "Survey of Colorado Tax Liens", see 14 Colo. Law. 1765 (1985). For article, "Taxation of Possessory Interests in Exempt Property Under S.B. 02-157", see 32 Colo. Law. 81 (March 2003).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Question of tax liens and their priority is for legislative determination. In the absence of

legislative action so declaring, taxes are not a lien upon the property. *People v. City & County of Denver*, 85 Colo. 61, 273 P. 883 (1928).

Revenue statutes are to be construed in favor of the public. *Gifford v. Callaway*, 8 Colo. App. 359, 46 P. 626 (1896).

Applied in Bd. of Comm'rs v. Denver & S. L. R. R., 88 Colo. 14, 291 P. 1020 (1930), appeal dismissed, 282 U.S. 814, 51 S. Ct. 216, 75 L. Ed. 729, cert. denied, 283 U.S. 826, 51 S. Ct. 348, 75 L. Ed. 1440 (1931).

II. THE TAX LIEN.

Lien effective upon assessment and levy. The tax lien provided does not become effective until the property is assessed and the taxes levied, at which time the theretofore inchoate lien relates back and attaches as of the date authorized for assessment. *Wolf v. Antonoff*, 161 Colo. 473, 423 P.2d 840 (1967).

Lien embraces only specific property levied upon. *Chicago Bazaar Co. v. McNichols*, 13 Colo. App. 154, 56 P. 672 (1899).

A tax lien against real property in one county may not be attached to an improvement upon real property in another county. When a motel which was subject to the plaintiff's tax lien on real property in Garfield County was dismantled and moved to the City and County of Denver, it became personal property which was no longer subject to such lien. *Israel v. Rifle Econolodge Joint Venture*, 793 P.2d 658 (Colo. App. 1990).

Except as to stocks in merchandise. The lien attaches to an entire stock in merchandise, through all its changes, so long as it remains in the hands of the person taxed. *Chicago Bazaar Co. v. McNichols*, 13 Colo. App. 154, 56 P. 672 (1899) (decided under former law).

Even stocks in merchandise held by trustee in bankruptcy. Lien covers the stock of merchandise and fixtures which subsequently came into the possession of the taxpayer's trustee in bankruptcy. *De Laney v. City & County of Denver*, 185 F.2d 246 (10th Cir. 1950) (decided under former law).

Statutory mode of collection must be pursued although tax deemed lien. If a specific mode is provided whereby the land may be sold to satisfy a tax lien, no suit in equity to enforce the sale can be maintained. The specific statutory mode of collection must be pursued. *Montezuma Valley Water Supply Co. v. Bell*, 20 Colo. 175, 36 P. 1102 (1894).

Lien upon land without regard to title. This section creates a lien upon real estate for the taxes assessed against it: the assessment and all subsequent proceedings down to and including the sale, are against the land without regard to title. *Statton v. People ex rel. Burr*, 18 Colo. App. 85, 70 P. 157 (1902).

This section and § 39-10-115 to be construed together. This section and § 39-10-115, concerning certificates of taxes due, should be construed together to mean simply that tax due on real property shall be a perpetual lien upon the real estate until paid or until the treasurer certifies payment. *Burton v. City & County of Denver*, 99 Colo. 207, 61 P.2d 856 (1936).

No law limits phrase "perpetual lien", or requires its foreclosure within a specified time on peril of its loss. *Bd. of Comm'rs v. Denver & S. L. R. R.*, 88 Colo. 14, 291 P. 1020 (1930), appeal dismissed, 282 U.S. 814, 51 S. Ct. 216, 75 L. Ed. 729, cert. denied, 283 U.S. 826, 51 S. Ct. 348, 75 L. Ed. 1440 (1931).

Lien on personalty not lost by issuance of tax receipt. Where the personal property in question continues the property of the taxpayer owing the tax and remains in the same jurisdiction, mere issuance of a tax receipt will not oust the lien of taxes, where the county treasurer failed to collect interest on taxes owed. *People ex rel. King v. Myers*, 16 Colo. App. 371, 65 P. 409 (1901).

Tax assessed for irrigation district is lien upon the land upon which it is levied. *Weghorst v. Clark*, 66 Colo. 535, 180 P. 742 (1919).

Prospect of future taxes not lien on property. The mere existence of a water and sanitation district and the prospect of taxes in the future was not a lien, encumbrance, or defect on the title to property. *Edwards v. St. Paul Title Ins. Co.*, 39 Colo. App. 235, 563 P.2d 979 (1977).

City acquired an interest in the personal property prior to the date of the chapter 11 bankruptcy since the statute provides that a lien for ad valorem personal property taxes arises at 12 noon on the assessment date for the current year and such lien is a perpetual lien. Although the interest was an inchoate lien, the city was allowed to perfect it after the assessment date and thus have the lien relate back to the assessment date. Therefore the personal property taxes were a prepetition secured claim. In re *Western States Distribs., Inc.*, 179 Bankr. 666 (Bankr. D. Colo. 1995).

III. PRIORITY OF TAX LIEN.

Priority of tax liens by express provision. Although the general assembly has the power to declare that tax liens shall be preferred, it must do so by express provision. Otherwise, priority in time will determine. *United States v. Elliott*, 209 F. Supp. 374 (D. Colo. 1962).

Lien for taxes superior to all other liens. The lien of taxes attaches to the land without regard to title and, consequently, is superior to all other liens. *Statton v. People ex rel. Burr*, 18 Colo. App. 85, 70 P. 157 (1902).

No lien upon land for personal tax cuts off prior valid lien upon the land. *Bd. of Comm'rs*

v. McDonald, 78 Colo. 519, 242 P. 682 (1926); United States v. Elliott, 209 F. Supp. 374 (D. Colo. 1962).

Priority of debt due United States federal question. Where the United States claims a priority, the priority of a lien for general taxes must be determined under federal law. United States v. Maes, 316 F. Supp. 1267 (D. Colo. 1969).

When county treasurer not indispensable party. The county treasurer who issued certi-

cate of sale to tax sale purchaser is not an indispensable party to a proceeding challenging priority of lien of secured party in property sold at tax sale where he claims no interest in the property since the tax lien has been discharged and where complete relief can be afforded without his presence as a party. John Deere Indus. Equip. Co. v. Moorehead, 38 Colo. App. 220, 556 P.2d 91 (1976), rev'd on other grounds, 194 Colo. 398, 572 P.2d 1207 (1977).

39-1-108. Payment of taxes - grantor and grantee. As between the grantor and grantee, when there is in the instrument of conveyance no express agreement as to which shall pay the taxes that may be levied on the property conveyed in the year in which conveyed, then if such conveyance is made after the thirty-first day of December and before the first day of July next following, the grantee shall pay such taxes; but if the conveyance is made after the thirtieth day of June and before the first day of January next following, the grantor shall pay such taxes.

Source: L. 64: R&RE, p. 677, § 1. C.R.S. 1963: § 137-1-8.

ANNOTATION

Annotator's note. The following annotations include cases decided under this section as it existed prior to its 1964 repeal and reenactment.

"Taxes" not limited to general property taxes. If it had been the intention of the general assembly to limit application of this section to general property taxes, it is reasonable to believe that the general assembly would have so indicated by apt language. McCord Mercantile Co. v. McIntyre, 25 Colo. App. 376, 138 P. 59 (1914).

Section applies to irrigation district taxes. McCord Mercantile Co. v. McIntyre, 25 Colo. App. 376, 138 P. 59 (1914).

Tax liability even where assessment not yet completed. One conveying lands in September is liable for tax of the same year even though, at the date of the conveyance, the assessment had not been completed nor become a lien on the lands. Rambo v. Armstrong, 45 Colo. 124, 100 P. 586 (1909).

Tax liability for successive conveyances in last half of year. Where, at the end of the year,

grantee, who purchased property in the last half of the year, has parted with title to that property and a third party owns it, there can be no recovery by grantee in first deed against his grantor for tax assessed against the property in the absence of allegations and proof that, in the course of the subsequent change in ownership, the grantee in the first deed either has obligated himself to his grantee to pay the taxes or otherwise sustained an equivalent loss. W. Dev. & Realization Corp. v. Hext, 108 Colo. 312, 117 P.2d 313 (1941).

Grantee in last half of year indemnified by implied contract. Contract implied by this section is to indemnify grantee of a conveyance in the last half of the year against loss for the payment of taxes on property which he owned and of which he had the use for less than half a year. W. Dev. & Realization Corp. v. Hext, 108 Colo. 312, 117 P.2d 313 (1941).

Section is not applicable where property is taken by condemnation proceedings. Fishel v. City & County of Denver, 106 Colo. 576, 108 P.2d 236 (1940).

39-1-109. Taxes paid by mortgagee - effect. If the mortgagor of real property fails or neglects to pay the taxes levied on such property or permits such property to be sold for taxes, the mortgagee may pay said taxes or redeem such property if sold for taxes, and any taxes so paid or redeemed shall become and be a lien upon such real property until the same have been repaid to the mortgagee. Upon payment of any such mortgage or in an action to enforce the same, such mortgagee may demand the taxes so paid or redeemed, with interest thereon at the same rate specified in the mortgage, and the same shall be included in any judgment rendered on the mortgage. The term "mortgage" includes deeds of trust, and the term "mortgagee" includes the beneficiary of a deed of trust.

Source: L. 64: R&RE, p. 678, § 1. C.R.S. 1963: § 137-1-9. L. 73: p. 1417, § 100.

ANNOTATION

Law reviews. For article, "Property Taxation of Oil and Gas Interests", see 24 Rocky Mt. L. Rev. 170 (1952).

Annotator's note. The following annotations include cases decided under this section as it existed prior to its 1964 repeal and reenactment.

Mortgagee must look to land for reimbursement. Payment of taxes upon mortgaged land affords to the mortgagee no personal action against the mortgagor, in the absence of a covenant to this effect; he must look to the land for

reimbursement. *Gilmour v. First Nat'l Bank*, 21 Colo. App. 301, 121 P. 767 (1912).

Mortgagee entitled to credit for amounts paid for taxes as against mortgagors in an action by mortgagors for an accounting and to redeem. *Dubois v. Bowles*, 30 Colo. 44, 69 P. 1067 (1902).

Applied in *Kansas City Life Ins. Co. v. Prowers County Oil & Gas Co.*, 81 Colo. 177, 254 P. 438 (1927).

39-1-110. Notice - formation of political subdivision - boundary change of special district. (1) (a) When any petition for the organization of a political subdivision is filed, the clerk of any court or board or any other officer with whom the petition has been filed shall immediately, in writing, notify the assessor and the board of county commissioners of each county in which the proposed political subdivision is to be located and the division of local government of the filing, and such notice shall specify the boundaries of the proposed political subdivision. No political subdivision shall levy a tax for the calendar year in which it has been organized unless, prior to July 1 of said year, the assessor and the board of county commissioners of each county within which such political subdivision is located have been notified of its organization and have received from its governing body the following:

(I) Official notice that a tax will be levied for such year;

(II) A legal description; and

(III) A map of the political subdivision.

(b) No levy for the calendar year in which a political subdivision has been organized shall be made by the board of county commissioners or certified to the assessor unless the political subdivision has complied with the provisions of paragraph (a) of this subsection (1).

(1.5) No political subdivision that is a special district shall levy a tax against property included in the special district for the calendar year during which such property was included unless, prior to May 1 of said year or, if such property is included in the special district pursuant to section 32-1-401 (2), C.R.S., prior to July 1 of said year, the court order of inclusion has been filed with the county clerk and recorder of the county in which the inclusion took place in accordance with the provisions of section 32-1-105, C.R.S.

(1.8) A political subdivision that is a special district shall not levy a tax against property excluded from the special district for the calendar year during which such exclusion becomes effective if, prior to May 1 of said year, the court order of exclusion has been filed with the county clerk and recorder of the county in which the exclusion took place in accordance with the provisions of section 32-1-105, C.R.S.

(2) Whenever all or any portion of a political subdivision becomes part of another county by reason of any change in county boundaries, the governing body of such political subdivision shall, within thirty days after the effective date of such change, notify, in writing, the assessor and the board of county commissioners of the county, of which all or any portion of such political subdivision has become a part, of its intention to levy a tax for the year in which such change became effective.

(3) The provisions of this section shall not apply to any school district, junior college district, health service district created pursuant to section 32-1-1003, C.R.S., or health assurance district created pursuant to section 32-1-1003.5, C.R.S.

(4) For purposes of this section, "special district" means a special district formed in accordance with the provisions of title 32, C.R.S.

Source: L. 64: R&RE, p. 678, § 1. C.R.S. 1963: § 137-1-10. L. 67: p. 946, § 6. L. 70: p. 380, § 11. L. 72: p. 620, § 162. L. 73: p. 1432, § 1. L. 85: (1) amended, p. 1022, § 10, effective July 1. L. 87: (1.5) and (1.8) added, p. 1396, § 1, effective April 22.

L. 90: (1) amended, p. 1436, § 8, effective January 1, 1991. **L. 2003:** (1), (1.5), (1.8), and (2) amended and (4) added, p. 746, § 1, effective March 25. **L. 2007:** (3) amended, p. 1201, § 19, effective July 1.

Cross references: For required notice for organization, dissolution, or boundary change of a special district, see § 32-1-105.

39-1-111. Taxes levied by board of county commissioners. (1) No later than December 22 in each year, the board of county commissioners in each county of the state, or such other body in the city and county of Denver as shall be authorized by law to levy taxes, or the city council of the city and county of Broomfield, shall, by an order to be entered in the record of its proceedings, levy against the valuation for assessment of all taxable property located in the county on the assessment date, and in the various towns, cities, school districts, and special districts within such county, the requisite property taxes for all purposes required by law.

(2) As soon as such levies have been made, the board of county commissioners or other body authorized by law to levy taxes shall forthwith certify all such levies to the assessor, upon forms prescribed by the administrator, and shall transmit a copy of such certification to the administrator, to the division of local government, and to the department of education.

(3) If the board of county commissioners or other body authorized by law to levy taxes fails to certify such levies to the assessor, it is the duty of the assessor, upon direction of the division of local government, to extend the levies of the previous year, subject to the limitations prescribed in section 29-1-301, C.R.S.

(4) If the valuation for assessment for all or any part of any body authorized to levy taxes has been divided for an urban renewal area, pursuant to section 31-25-107 (9) (a), C.R.S., the board of county commissioners shall make the same levy on the portion of valuation for assessment divided under subparagraph (II) as under subparagraph (I) of said section 31-25-107 (9) (a), C.R.S., for payment of taxes according to the provisions of said section, so long as said division remains in effect.

(5) If, after certification of the valuation for assessment pursuant to section 39-5-128 and notification of total actual value pursuant to section 39-5-121 (2) (b) but prior to December 10, changes in such valuation for assessment or total actual value are made by the assessor, the assessor shall send a single notification to the board of county commissioners or other body authorized by law to levy property taxes, to the division of local government, and to the department of education that includes all of such changes that have occurred during said specified period of time. Upon receipt of such notification, such board or body shall make adjustments in the tax levies to ensure compliance with section 29-1-301, C.R.S., if applicable, and may make adjustments in order that the same amount of revenue be raised. A copy of any adjustment to tax levies shall be transmitted to the administrator and assessor. Nothing in this subsection (5) shall be construed as conferring the authority to exceed statutorily imposed mill levy or revenue-raising limits.

Source: **L. 64:** R&RE, p. 679, § 1. **C.R.S. 1963:** § 137-1-11. **L. 69:** p. 1115, § 1. **L. 70:** p. 380, § 12. **L. 72:** p. 620, § 163. **L. 73:** p. 1433, § 2. **L. 75:** (1) amended, p. 1456, § 1, effective July 14; (4) added, p. 1278, § 5, effective July 16. **L. 76:** (1) amended, p. 686, § 3, effective July 1. **L. 81:** (5) added, p. 1397, § 7, effective June 19. **L. 84:** (5) amended, p. 991, § 1, effective March 26. **L. 87:** (1) and (5) amended, p. 1410, § 13, effective April 22. **L. 88:** (1) amended, p. 823, § 36, effective May 24; (1) amended, p. 1283, § 8, effective January 1, 1989. **L. 89:** (1) and (5) amended, p. 1452, § 5, effective June 7. **L. 93:** (2) and (5) amended, p. 1282, § 3, effective June 6. **L. 96:** (5) amended, p. 719, § 2, effective May 22. **L. 2001:** (1) amended, p. 268, § 15, effective November 15.

Editor's note: Amendments to subsection (1) by House Bill 88-1341 and Senate Bill 88-184 were harmonized.

Cross references: For certification by boards of education of amounts that may be levied by boards of county commissioners for school districts, see § 22-40-102; for the procedure for levy and collection of taxes in a special district and the duty of county officers to levy and collect the taxes, see §§ 32-1-1201 and 32-1-1202.

ANNOTATION

Law reviews. For article, "A Calendar of Tax Procedure in Colorado", see 6 Dicta 17 (July 1929).

Action of board of county commissioners under subsection (1) is purely ministerial. Bolt v. Arapahoe County Sch. Dist. No. 6, 898

P.2d 525 (Colo. 1995).

Applied in City & County of Denver v. Bd. of Dir., 37 Colo. App. 496, 549 P.2d 1090 (1976).

39-1-111.5. Temporary property tax credits and temporary mill levy rate reductions. (1) In order to effect a refund for any of the purposes set forth in section 20 of article X of the state constitution, any local government may approve and certify a temporary property tax credit or temporary mill levy rate reduction as set forth in this section. The procedures set forth in this section shall be deemed to be a reasonable method for effecting refunds in accordance with section 20 of article X of the state constitution.

(2) Concurrent with the certification of its levy to the board of county commissioners as required pursuant to section 39-5-128 (1), any local government may certify a refund in the form of a temporary property tax credit or temporary mill levy rate reduction. The certification shall include the local government's gross mill levy, the temporary property tax credit or temporary mill levy rate reduction expressed in mill levy equivalents, and the net mill levy, which shall be the gross mill levy less the temporary property tax credit or temporary mill levy rate reduction.

(3) Concurrent with certification to the assessor of all mill levies by the board of county commissioners or other body authorized by law to levy taxes in accordance with section 39-1-111 (2), the board of county commissioners shall certify any other local government's temporary property tax credit or temporary mill levy rate reduction and any temporary property tax credit or temporary mill levy rate reduction for the county or city and county itself, itemized as set forth in subsection (2) of this section.

(4) Concurrent with the delivery to the treasurer of the tax warrant by the assessor in accordance with section 39-5-129, the assessor shall, in addition to all other information required to be set forth in the tax warrant, itemize in the manner set forth in subsection (2) of this section any duly certified temporary property tax credit or temporary mill levy rate reduction.

(5) Upon receipt of any tax warrant reflecting a temporary property tax credit or temporary mill levy rate reduction for any local government, the treasurer shall be responsible for collecting taxes on behalf of such local government based upon such local government's net adjusted mill levy. In addition to any other information required by section 39-10-103, the tax statement shall indicate by footnote which, if any, local government mill levies contained therein reflect a temporary property tax credit or temporary mill levy rate reduction for the purpose of effecting a refund in accordance with section 20 of article X of the state constitution.

Source: L. 93: Entire section added, p. 1686, § 1, effective June 6.

39-1-112. Taxes available - when. Except as otherwise provided in article 1.5 of this title, all taxes levied pursuant to the provisions of articles 1 to 13 of this title shall be available for expenditure by the political subdivision for which levied during its fiscal year as collected.

Source: L. 64: R&RE, p. 679, § 1. **C.R.S. 1963:** § 137-1-12. **L. 81:** Entire section amended, p. 1841, § 2, effective May 28.

39-1-113. Abatement and refund of taxes. (1) Except as otherwise provided in subsection (1.5) of this section, no decision on any petition regarding abatement or refund of taxes, as provided for in section 39-10-114, shall be made by the board of county commissioners unless a hearing is had thereon, at which hearing the assessor and the taxpayer shall have the opportunity to be present. The board may appoint independent referees who are experienced in property valuation to conduct the hearing on behalf of the board, to make findings, and to submit recommendations to the board for its final decision.

(1.5) Upon authorization by the board of county commissioners, the assessor may review petitions for abatement or refund and settle by written mutual agreement any such petition for abatement or refund in an amount of ten thousand dollars or less per tract, parcel, or lot of land or per schedule of personal property. Any abatement or refund agreed upon and settled pursuant to this subsection (1.5) shall not be subject to the requirements of subsection (1) of this section.

(1.7) Every petition for abatement or refund filed pursuant to section 39-10-114 shall be acted upon pursuant to the provisions of this section by the board of county commissioners or the assessor, as appropriate, within six months of the date of filing such petition.

(2) (a) Whenever any abatement or refund in an amount of ten thousand dollars or less is recommended by the board of county commissioners, the board shall order the abatement of taxes pro rata for all levies applicable to such property, or, in the case of a refund, the board shall order the refund of taxes pro rata by all jurisdictions receiving payment thereof.

(b) Whenever any abatement or refund in an amount of ten thousand dollars or less has been agreed upon and settled by the assessor pursuant to subsection (1.5) of this section, the assessor shall order the abatement of taxes pro rata for all levies applicable to such property, or, in the case of a refund, the assessor shall order the refund of taxes pro rata by all jurisdictions receiving payment thereof.

(3) Whenever any abatement or refund in an amount in excess of ten thousand dollars is recommended by the board of county commissioners, two copies of an application therefor, reciting the amount of such abatement or refund and the grounds upon which it should be allowed, shall be submitted to the administrator for review pursuant to section 39-2-116. If an application is approved, the board of county commissioners shall order the abatement of taxes pro rata for all levies applicable to such property, or, in the case of a refund, the board of county commissioners shall order the refund of taxes pro rata by all jurisdictions receiving payment thereof.

(4) (Deleted by amendment, L. 91, p. 1962, § 2, effective June 5, 1991.)

(5) If a hearing is required pursuant to subsection (1) of this section, the board of county commissioners shall provide at least seven days' notice of the scheduled hearing on a petition for abatement and refund of taxes to the person signing such petition and the taxpayer if the taxpayer did not sign the petition. Notice shall be provided by sending to such person through the United States mail notification of the date, time, and place of the hearing.

(6) Notwithstanding any law to the contrary, for taxes levied on and after January 1, 1990, a taxpayer may file a petition for abatement or refund of taxes levied on property if the valuation of such property was the subject of an arbitration hearing pursuant to section 39-8-108.5 and the arbitrator presiding over such hearing failed to deliver a decision to the taxpayer prior to the beginning date of the period during which the assessor sits to hear all objections and protests concerning the valuation of such property in the year following the year in which such arbitration hearing was held.

Source: L. 64: R&RE, p. 679, § 1. C.R.S. 1963: § 137-1-13. L. 70: p. 381, § 13. L. 77: Entire section amended, p. 1733, § 6, effective June 20. L. 81: Entire section amended, p. 1837, § 1, effective January 1, 1982. L. 87: Entire section amended, p. 1397, § 1, effective May 6. L. 88: (1) to (3) amended, pp. 1290, 1294, §§ 23, 27, effective May 23. L. 90: (2) and (3) amended, p. 1703, § 38, effective June 9. L. 91: (1) and (4) amended and (5) and (6) added, p. 1962, § 2, effective June 5. L. 92: (1), (2), (5), and (6) amended and (1.5) and (1.7) added, p. 2205, § 1, effective June 3. L. 93: (1) amended, p. 1744, § 3, effective July 1. L. 96: (3) amended, p. 649, § 1, effective May 1. L. 2003: (1) amended,

p. 1347, § 1, effective August 6. **L. 2008:** (2) and (3) amended, p. 1246, § 5, effective August 5. **L. 2010:** (1.5), (2), and (3) amended, (HB 10-1117), ch. 195, p. 841, § 1, effective August 11.

Cross references: For approval of tax abatements or refunds by the property tax administrator, see § 39-2-116; for further restrictions relating to the abatement, refund, and cancellation of taxes, see § 39-10-114.

ANNOTATION

Where this section and § 39-10-114 protect taxpayer's due process rights. Where taxpayer complained that county assessor had failed to give the required timely notice of an increased assessment, thus depriving him of his statutory right to litigate validity of the assessment before paying tax, no federally guaranteed rights were abridged because the abatement and refund procedures of this section and § 39-10-114 allowed plain, adequate, and complete remedy, thus fully protecting the taxpayer's due process rights. *Lamm v. Barber*, 192 Colo. 511, 565 P.2d 538 (1977).

Prior to suit, taxpayer must exhaust administrative remedies. The remedies contained in § 39-10-114, relating to procedures for abatement or cancellation of taxes and this section are complete and adequate; thus, prior to commencing suit on illegal taxation issues, taxpayers are required to exhaust the administrative remedies detailed in these sections. *Davison v. Bd. of County Comm'rs*, 41 Colo. App. 344, 585 P.2d 315 (1978); *Southern Cafeteria, Inc. v. Prop. Tax Adm'r*, 677 P.2d 362 (Colo. App. 1983).

By approving taxpayer's petition "conditionally" or otherwise and submitting it to the property tax administrator for further action, the board of county commissioners' procedural rights as a party ended under the statutory scheme governing abatement and refund proceedings. *Huerfano County Bd. of County Comm'rs v. Atlantic Richfield Co.*, 976 P.2d 893 (Colo. App. 1999).

When section applies. This section applies to the refund of taxes paid under § 39-8-109 after a taxpayer who sought administrative relief under § 39-5-122 prevailed before the board of assessment appeals or the district court or when property taxes cannot be challenged under § 39-5-122. *Bd. of Assessment Appeals v. Benbrook*, 735 P.2d 860 (Colo. 1987).

This section and § 39-10-114 provide a remedy for the abatement or refund of taxes that cannot be challenged under § 39-5-122. *Valley Country Club v. Bd. of Assessment Appeals*, 778 P.2d 285 (Colo. App. 1989), rev'd on other grounds, 792 P.2d 299 (Colo. 1990).

The abatement procedure may be used to provide taxpayer relief from the overassess-

ment of his property in situations where his knowledge of excessive charges is acquired subsequent to the usual statutory deadlines for protest. *Valley Country Club v. Bd. of Assessment Appeals*, 778 P.2d 285 (Colo. App. 1989), rev'd on other grounds, 792 P.2d 299 (Colo. 1990).

Board of assessment appeals may conduct de novo review in reviewing taxpayer's appeal from property tax administrator. *Bd. of Assessment Appeals v. Valley Country Club*, 792 P.2d 299 (Colo. 1990).

Illegal or erroneous tax. Where one owner of a converted condominium, after pursuing administrative remedies under § 39-5-122, obtained a declaration from district court that the imposition of an increased tax on his converted condominium was illegal, petitioners, as owners of identical condominiums were entitled to seek relief under the abatement and refund provisions of this section and § 39-10-114 because the tax had been declared illegal. *Bd. of Assessment Appeals v. Benbrook*, 735 P.2d 860 (Colo. 1987).

There is no need to characterize the tax paid as wholly illegal before the taxpayer may obtain abatement and refund. *Bd. of Assessment Appeals v. Benbrook*, 735 P.2d 860 (Colo. 1987).

Refund statute not applicable where property has been assessed improperly because of taxpayer's error in reporting and where taxpayer did not make a timely objection. *Coquina Oil v. Larimer Co. Bd. of Equal.*, 742 P.2d 932 (Colo. App. 1987), aff'd, 770 P.2d 1196 (Colo. 1989); *Aurora Plaza v. Bd. of Assessment Appeals*, 770 P.2d 1204 (Colo. 1989); *Amoco Prod. v. Bd. of Assessment Appeals*, 770 P.2d 1207 (Colo. 1989).

Where error is due at least in part to the taxing authority, a taxpayer can recover a refund under the clerical error provision of this section, after the time to protest under § 39-5-122 has passed. *Coquina Oil Corp. v. Bd. of Equaliz.*, 770 P.2d 1196 (Colo. 1989).

Applied in *Bd. of County Comm'rs v. District Court*, 199 Colo. 338, 607 P.2d 999 (1980); *Laredo Hous. Apts., Ltd. v. Bd. of County Comm'rs*, 628 P.2d 135 (Colo. App. 1980); *Laredo Hous. Apts., Ltd. v. Bd. of Assessment Appeals*, 675 P.2d 23 (Colo. App. 1983).

39-1-114. Who may administer oath. Whenever any fact, matter, or thing is required by the provisions of articles 1 to 13 of this title to be verified by oath or affirmation, any assessor, treasurer, or county clerk and recorder, or a deputy of any of said officers may administer such oath or affirmation. The deputy need not certify the oath in the name of the principal.

Source: L. 64: R&RE, p. 679, § 1. C.R.S. 1963: § 137-1-14.

39-1-115. Records prima facie evidence. The assessment rolls, the tax warrants, the entries made in the books of the treasurer, and the lists of lands sold for taxes recorded by the treasurer or the county clerk and recorder, or a certified copy thereof, shall be prima facie evidence of all things appearing therein in all courts and places.

Source: L. 64: R&RE, p. 679, § 1. C.R.S. 1963: § 137-1-15.

ANNOTATION

Annotator's note. The following annotations include cases decided under this section as it existed prior to its 1964 repeal and reenactment.

Records conclusive unless refuted. Where personalty, shown to have existed during the years in question, but nevertheless omitted from the assessment rolls for those years, is discovered and assessed, the owner who contends that the property was properly omitted from the assessment rolls has the burden of proving his contention, failing in which, the record evidence showing assessment must be taken as conclusive. *McGuire v. Schwartz*, 101 Colo. 310, 73 P.2d 389 (1937).

Limitation on presumption created by section. Where personalty discovered in decedent's

possession at the time of her death had not been reported in the personal property returns of decedent in the year of her death or the preceding years, the presumption created by this section will not support a presumption, advanced by the manager of revenue, in a suit for personal property taxes, that decedent made false returns concerning personalty which she, in fact, owned, nor does it shift the burden of proof to the defendant executor of decedent's estate. *Brodhead v. Robinson*, 127 Colo. 116, 254 P.2d 857 (1953).

This section does not apply to copies of tax schedules. *Bankers Trust Co. v. Int'l Trust Co.*, 108 Colo. 15, 113 P.2d 656 (1941).

39-1-116. Penalty for divulging confidential information. Except when pursuant to an order of any court of competent jurisdiction or as otherwise provided by law, any person who divulges or makes known in any way the contents of any private document, as specified in section 39-4-103, 39-5-120, or 39-7-101 (4), to any person not authorized to have access to such documents is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail for not more than three months, or by both such fine and imprisonment.

Source: L. 64: R&RE, p. 680, § 1. C.R.S. 1963: § 137-1-16. L. 96: Entire section amended, p. 110, § 2, effective January 1, 1997.

Cross references: For confidential records submitted by a public utility, see § 39-4-103; for confidential personal property schedules, see § 39-5-120.

39-1-117. Prior actions not affected. Nothing in articles 1 to 13 of this title shall apply to or in any manner affect any valuation, assessment, allocation, levy, tax certificate, tax warrant, tax sale, tax deed, right, claim, demand, lien, indictment, information, warrant, prosecution, defense, trial, cause of action, motion, appeal, judgment, sentence, or other authorized act, done or to be done, or proceeding arising under or pursuant to the laws in effect immediately prior to August 1, 1964, but the same shall be governed by and conducted pursuant to the provisions of law in effect immediately prior to August 1, 1964.

Source: L. 64: R&RE, p. 748, § 2. C.R.S. 1963: § 137-1-18.

39-1-118. Repeal of law levying state property tax - disposition of funds. After the repeal of any law levying a general property tax for the state or for state purposes takes effect, delinquent taxes collected by county treasurers as a result of the levy imposed by any such repealed law shall, when received by the state treasurer, be credited to the capital construction fund.

Source: L. 71: p. 1243, § 1. C.R.S. 1963: § 137-1-21.

Cross references: For the creation of and provisions relating to the capital construction fund, see § 24-75-302.

39-1-119. Funds held for payment of taxes - refund - reduction and increase of amounts - penalty. (1) Each year, subject to the provisions of section 39-3.5-105 (2), all funds held in escrow for the payment of ad valorem taxes on property pursuant to the terms of any deed of trust, mortgage, or other agreement creating a security interest in the property on May 20 of that year for payment of such year's ad valorem taxes, in excess of three-twelfths of the ad valorem taxes paid in such year, shall be refunded on or before May 30 of the year in which such taxes were paid.

(2) Payments into such escrow accounts for the payment of ad valorem taxes due in subsequent years shall be adjusted annually, based upon the amount of taxes paid on the subject property for the preceding year, but if such person reasonably believes that substantial improvements have been made to such property, which improvements were not included within the previous year's assessment, a reasonable estimate of the taxes for such subsequent years may be used as a basis for establishing the payments for such escrow account.

(2.5) The amount of payments into such escrow accounts for the payment of ad valorem taxes due in subsequent years shall be increased only upon official notification of an increase in the amount of taxes levied on such property. Such amounts shall not be increased based solely upon notification of an increase in the valuation for assessment of such property.

(3) Any person willfully failing to make a refund in violation of subsection (1) of this section for any whole month or more shall be liable for interest at a rate of six percent per annum and an equal amount as penalty.

Source: L. 73: p. 1435, § 1. C.R.S. 1963: § 137-1-22. L. 74: (1) amended, p. 427, § 1, effective March 19. L. 79: (1) amended, p. 1414, § 10, effective January 1, 1980. L. 80: (1) amended, p. 797, § 62, effective June 5. L. 87: (2.5) added, p. 1389, § 11, effective June 20. L. 93: (1) amended, p. 346 § 2, effective April 12. L. 98: (1) amended, p. 828, § 51, effective August 5.

39-1-119.5. Funds collected by lessors of personal property for payments of taxes - refund - damages. (1) If a personal property lessee is required to make payment to a lessor pursuant to the terms of any contract or other agreement entered into between the lessee and lessor for the payment of personal property tax due on or after January 1, 2007, those payments shall be accounted for upon the termination of the lease entered into between the lessee and lessor. If it is determined upon this accounting that a refund is due to the lessee for overpayment of personal property taxes, the lessor shall make such refund to the lessee on or before August 31 of the year in which the tax is due.

(2) The lessor shall base the accounting and refund on the actual property tax liability due in each year of the lease period.

(3) Any lessor who willfully fails to make a refund in violation of subsection (1) of this section shall be liable to the lessee, in a civil action, in an amount equal to the sum of three times the amount of actual damages sustained and in the case of any successful action to enforce said liability, the costs of the action together with reasonable attorney fees as determined by the court.

(4) Any action brought under this section shall be commenced within three years after the date on which the failure to refund occurred or within three years after the lessee discovered or in the exercise of reasonable diligence should have discovered the lessor's failure to refund. The period of limitation provided in this section may be extended for a period of one year if the lessee proves that failure to timely commence the action was caused by the lessor engaging in conduct calculated to induce the lessee to refrain from or postpone the commencement of the action.

Source: L. 2006: Entire section added, p. 311, § 1, effective April 4.

39-1-120. Filing - when deemed to have been made. (1) (a) Any report, schedule, claim, tax return, statement, or other document required or authorized under articles 1 to 9 of this title to be filed with or any payment made to the state of Colorado or any political subdivision thereof which is transmitted through the United States mail shall be deemed filed with and received by the public officer or agency to which it was addressed on the date shown by the cancellation mark stamped on the envelope or other wrapper containing the document required to be filed.

(b) Any such document which is mailed, but not received by the public officer or agency to which it was addressed, or is received and the cancellation mark is not legible, or is erroneous or omitted, shall be deemed to have been filed and received on the date it was mailed if the sender establishes by competent evidence that the document was deposited in the United States mail on or before the date due for filing. In such cases of nonreceipt of a document by the public officer or agency to which it was addressed, the sender shall file a duplicate copy thereof within thirty days after written notification is given to the sender by such public officer of the failure to receive such document.

(2) If any report, schedule, claim, tax return, statement, remittance, or other document is sent by United States registered mail, certified mail, or certificate of mailing, a record authenticated by the United States postal service of such registration, certification, or certificate shall be considered competent evidence that the report, schedule, claim, tax return, statement, remittance, or other document was mailed to the public officer or agency to which it was addressed, and the date of the registration, certification, or certificate shall be deemed to be the postmark date.

(3) If the date for filing any report, schedule, claim, tax return, statement, remittance, or other document falls upon a Saturday, Sunday, or legal holiday, it shall be deemed to have been timely filed if filed on the next business day.

Source: L. 77: Entire section added, p. 1404, § 2, effective July 1. **L. 79:** (1)(a) amended, p. 1420, § 1, effective January 1, 1980.

ANNOTATION

Under the provisions of subsection (1)(a), abatement and refund petitions transmitted by mail are deemed "filed" on the date of

mailing for the purposes of the filing deadline set forth in § 39-10-114 (1)(a)(I)(A). *Leprino v. Huddleston*, 902 P.2d 962 (Colo. App. 1995).

39-1-121. Expression of rate of property taxation in dollars per thousand dollars of valuation for assessment - definitions. (1) As used in this section, unless the context otherwise requires:

(a) "Communication" means any tax statement pursuant to section 39-10-103.

(b) "Mill" means the rate of property taxation equivalent to the amount of dollars per one thousand dollars of valuation for assessment of taxable real or personal property.

(c) "Valuation for assessment" means the actual value of any real or personal property multiplied by the assessment percentages specified in section 3 of article X of the state constitution.

(2) The general assembly hereby finds, determines, and declares that communications to taxpayers regarding the imposition of property taxes expressed in mills can be unduly confusing to the general public. The general assembly further finds, determines, and

declares that, for the convenience of taxpayers and to assist citizens in better understanding the property taxation system, it is advantageous for governmental entities levying property taxes to inform taxpayers of such tax rates in terms of the amount of dollars per one thousand dollars of valuation for assessment of taxable real or personal property.

(3) In any communication to a taxpayer, any mill levy amounts stated shall be converted into the amount of dollars per one thousand dollars of valuation for assessment of taxable real or personal property.

Source: **L. 88:** Entire section added, p. 1273, § 7, effective July 1. **L. 92:** (1)(a) amended, p. 2181, § 52, effective June 2. **L. 94:** (1)(a) amended, p. 1197, § 103, effective July 1.

39-1-122. Interim task force to study property tax assessment - classification - land used for agricultural and other purposes - 2010 interim - legislative declaration - repeal. (Repealed)

Source: **L. 2010:** Entire section added, (HB 10-1293), ch. 357, p. 1699, § 1, effective June 7.

Editor’s note: Subsection (7) provided for the repeal of this section, effective July 1, 2012. (See L. 2010, p. 1699.)

ARTICLE 1.5

Prepayment of Ad Valorem Taxes

39-1.5-101.	Legislative declaration.		its - limitations.
39-1.5-102.	Definitions.	39-1.5-105.	Prepaid taxes subject to laws governing financial affairs.
39-1.5-103.	Authorization of prepayment of taxes for capital improvements to local governments - no effect on obligation to pay taxes to other local governments.	39-1.5-106.	Relationship between prepaid taxes and the limitation on local government levies.
		39-1.5-107.	Prepayment arrangement not a general obligation indebtedness.
39-1.5-104.	Prepayment - amounts - cred-		

39-1.5-101. Legislative declaration. The general assembly hereby finds and declares that energy development operations and mineral extraction or conversion operations should be authorized to prepay ad valorem taxes to local governments for expenditure on capital improvements in order to meet additional public service demands created by such operations.

Source: **L. 81:** Entire article added, p. 1839, § 1, effective May 28.

- 39-1.5-102. Definitions.** As used in this article, unless the context otherwise requires:
- (1) “Capital improvement” means any road or highway, school facility or equipment, domestic, commercial, or industrial water facility, sewage facility, police and fire protection facility or equipment, hospital facility or equipment, or any other local government administrative or judicial facility which a local government is authorized by law to acquire or construct.
- (2) “Local government” means a county, municipality as defined in section 31-1-101, C.R.S., school district, or special district which has the authority to impose general property taxes.
- (3) “Operation” means the development, construction, and operation of any facility for the production of energy or the extraction, processing, conversion, or refining of minerals, including, but not limited to, a mine, power plant, mill, retort, or related facility, or any

combination thereof under the same ownership, if the valuation for assessment of the taxable property of the operation within the boundaries of a local government is estimated to exceed fifty million dollars when the operation begins functioning.

Source: L. 81: Entire article, p. 1839, § 1, effective May 28.

39-1.5-103. Authorization of prepayment of taxes for capital improvements to local governments - no effect on obligation to pay taxes to other local governments.

(1) An owner of an operation may prepay moneys to one or more local governments, within the boundaries of which is located taxable property of the operation, for credit against general property taxes which will be levied in the future pursuant to articles 1 to 13 of this title. Said moneys shall be expended on capital improvements which are directly or indirectly related to the additional public service demands created by the operation.

(2) If an operation prepays moneys for credit against general property taxes pursuant to this article to one or more local governments, said prepayment shall not vary the operation's obligations, under law, to pay general property taxes to any local government which does not receive such prepayments.

Source: L. 81: Entire article added, p. 1840, § 1, effective May 28.

39-1.5-104. Prepayment - amounts - credits - limitations. (1) An owner of an operation who elects to make prepayments under this article and the governing body of a local government shall jointly determine and agree upon:

(a) The total amount of prepayments to be made; except that the total amount of prepayments shall not exceed twenty-five percent of the estimate of the operation's projected tax liability to the local government over a twenty-year period, commencing with the taxable year in which the valuation for assessment of the operation is estimated to exceed fifty million dollars;

(b) The amounts and intervals of prepayments and credits for such prepayments; except that an annual prepayment credit shall not be allowed prior to the taxable year in which the operation begins functioning or the valuation for assessment of the operation exceeds fifty million dollars, whichever is earlier, nor shall it exceed twenty-five percent of the taxes due from the operation to that local government for the then current property tax year.

(2) The owner of an operation, the governing body of the local government, the assessor, the treasurer, and the division of property taxation in the department of local affairs shall estimate when the operation's projected valuation for assessment will exceed fifty million dollars and the amount thereof for the ensuing twenty years, as well as the operation's projected liability for general property taxes for the applicable period.

(3) The governing body of the local government shall adopt a resolution or ordinance which contains the total amount of taxes to be prepaid, the anticipated amounts and anticipated intervals of prepayments and credits for such prepayments, and the capital improvement or improvements upon which such prepaid taxes will be expended.

(4) The credit allowed in any taxable year for prepayments made under this article to or for each local government or any fund or account within the fund thereof shall be treated as an abatement of the property taxes due to such local government for that year from said operation and shall not affect the determination of the valuation for assessment thereof. The credit shall be shown on the tax statement for that year as it applies to each local government, fund, or fund account to which applied.

Source: L. 81: Entire article added, p. 1840, § 1, effective May 28.

39-1.5-105. Prepaid taxes subject to laws governing financial affairs. Moneys received pursuant to this article are subject to such laws relating to financial affairs, including budget, accounting, and auditing laws, as are or may be made applicable to the local government which receives such moneys.

Source: L. 81: Entire article added, p. 1841, § 1, effective May 28.

39-1.5-106. Relationship between prepaid taxes and the limitation on local government levies. In determining the amount of revenue which a local government is allowed to levy under section 29-1-301, C.R.S., prepayments made under this article shall not be deemed property tax revenue in the year of prepayment; however, tax liability against which a credit is to be allowed shall be deemed property tax revenue attributable to increased valuation for new construction or bond revenue in accordance with section 29-1-302, C.R.S., in the year in which a credit is to be allowed.

Source: L. 81: Entire article added, p. 1841, § 1, effective May 28.

39-1.5-107. Prepayment arrangement not a general obligation indebtedness. Any arrangement for prepayment of ad valorem taxes under this article shall not be construed to be a general obligation indebtedness.

Source: L. 81: Entire article added, p. 1841, § 1, effective May 28.

ARTICLE 2

Division of Property Taxation - Administrator - Board

Editor's note: This article was repealed and reenacted in 1964 and was subsequently repealed and reenacted in 1970, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1970, consult the Colorado statutory research explanatory note beginning on page vii in the front of this volume and the editor's note before the article 1 heading.

39-2-101.	Division created - property tax administrator.	39-2-118.	Recommendations to governor.
39-2-102.	Qualifications.	39-2-119.	Annual report.
39-2-103.	Exercise of power.	39-2-120.	Powers of property tax administrator.
39-2-104.	Oath of office.	39-2-121.	Enforcement of orders.
39-2-105.	Seal.	39-2-122.	Notice prior to injunction.
39-2-106.	Employees - compensation.	39-2-123.	Board of assessment appeals created - members - compensation.
39-2-107.	Office - hearings.	39-2-124.	Executive director to furnish employees and clerical assistance.
39-2-108.	Rules and regulations.	39-2-125.	Duties of the board.
39-2-109.	Duties, powers, and authority.	39-2-126.	Delaying effect of decision - when.
39-2-109.5.	Computers for property assessment - state assistance. (Repealed)	39-2-127.	Board of assessment appeals meetings - proceedings - representation before board.
39-2-110.	Annual school for assessors.	39-2-128.	Board of assessment appeals may issue orders.
39-2-111.	Complaints.	39-2-129.	Advisory committee to the property tax administrator created.
39-2-112.	Assessor to appear - when.	39-2-130.	Membership of the advisory committee - terms - compensation - meetings.
39-2-113.	Administrator may intervene.	39-2-131.	Function of the committee.
39-2-114.	Reappraisal - when - procedures.		
39-2-115.	Review of abstracts of assessment - recommendations.		
39-2-116.	Approval of tax abatement or refund.		
39-2-117.	Applications for exemption - review - annual reports - procedures - rules.		

39-2-101. Division created - property tax administrator. There is hereby created the division of property taxation in the department of local affairs, the head of which shall be

the property tax administrator, which office is created by section 15 of article X of the state constitution. The administrator shall be appointed by a majority vote of the state board of equalization and shall serve for a term of five years and until a successor is appointed and qualified. The administrator may be removed from office for cause by a majority vote of the state board of equalization. The position of property tax administrator shall be exempt from the state personnel system.

Source: L. 70: R&RE, p. 371, § 1. C.R.S. 1963: § 137-3-1. L. 84: Entire section amended, p. 992, § 1, effective February 17.

Cross references: For the creation of the department of local affairs, see § 24-1-125.

39-2-102. Qualifications. The person appointed as property tax administrator shall possess knowledge of the subject of property taxation and of the laws of this state relating thereto and shall have demonstrated ability and experience in the field of property taxation. He shall devote his full time to the performance of his duties as administrator and shall hold no other office under the United States, the state, or any political subdivision thereof.

Source: L. 70: R&RE, p. 371, § 1. C.R.S. 1963: § 137-3-2.

39-2-103. Exercise of power. The division of property taxation and the property tax administrator shall exercise their powers, duties, and functions under the department of local affairs as if they were transferred to said department by a **type 1** transfer under the provisions of the "Administrative Organization Act of 1968".

Source: L. 70: R&RE, p. 371, § 1. C.R.S. 1963: § 137-3-3.

Cross references: For the creation of the department of local affairs, see § 24-1-125; for the "Administrative Organization Act of 1968", see article 1 of title 24.

39-2-104. Oath of office. Before entering upon the duties of his office, the property tax administrator shall take and subscribe to the constitutional oath of office, which oath or affirmation shall be filed in the office of the secretary of state.

Source: L. 70: R&RE, p. 372, § 1. C.R.S. 1963: § 137-3-4.

Cross references: For oath of office required of civil officers, see § 8 of article XII of the state constitution.

39-2-105. Seal. The division of property taxation shall have an official seal with the words "Property Tax Division - Department of Local Affairs" and such other appropriate design as the property tax administrator may determine engraved thereon, by which he shall authenticate proceedings conducted by him and of which the courts shall take judicial notice.

Source: L. 70: R&RE, p. 372, § 1. C.R.S. 1963: § 137-3-5.

39-2-106. Employees - compensation. Pursuant to the provisions of section 13 of article XII of the state constitution, the property tax administrator may employ a secretary and such other clerical and professional personnel as may be required to perform his duties. Compensation of the property tax administrator and other employees and necessary expenses of the division of property taxation shall be paid from annual appropriations made to the division by the general assembly. Any costs of the property tax administrator in implementing the assessment and levy procedures required pursuant to section 39-5-132 shall be paid by the local taxing authorities pursuant to said section.

Source: L. 70: R&RE, p. 372, § 1. C.R.S. 1963: § 137-3-6. L. 85: Entire section amended, p. 1226, § 4, effective January 1, 1986.

39-2-107. Office - hearings. (1) The property tax administrator shall maintain his office in the city of Denver but may transact official business at any other place within the state. The office shall be open during established hours each day, Saturdays, Sundays, and legal holidays excepted.

(2) Any hearings conducted by the administrator or the division shall be open to the public, and full and correct minutes thereof shall be kept, and such minutes shall be a public record open to public inspection.

Source: L. 70: R&RE, p. 372, § 1. C.R.S. 1963: § 137-3-7.

39-2-108. Rules and regulations. The administrator shall adopt rules and regulations governing proceedings and hearings pursuant to the provisions of article 4 of title 24, C.R.S., which rules and regulations shall be subject to legislative review pursuant to section 24-4-103 (8) (d), C.R.S.

Source: L. 70: R&RE, p. 372, § 1. C.R.S. 1963: § 137-3-8. L. 77: Entire section amended, p. 1733, § 8, effective June 20.

39-2-109. Duties, powers, and authority. (1) It is the duty of the property tax administrator, and the administrator shall have and exercise authority:

(a) To value the property and plant of all public utilities doing business in this state in the manner prescribed by law, which value shall be equalized in accordance with the provisions of section 39-4-102 (3), and to prepare and furnish all forms required to be filed with him by public utilities;

(b) To assist and cooperate in the administration of all laws concerning the valuing of taxable property, the assessment of same, and the levying of property taxes;

(c) Repealed.

(d) To approve the form and size of all personal property schedules, forms, and notices furnished or sent by assessors to owners of taxable property, the form of petitions for abatement or refund, the form of all field books, plat and block books, maps, and appraisal cards used in the office of the assessor and other forms and records used and maintained by the assessor and to require exclusive use of such approved schedules, books, maps, appraisal cards, forms, and records by all assessors to insure uniformity;

(e) To prepare and publish from time to time manuals, appraisal procedures, and instructions, after consultation with the advisory committee to the property tax administrator and the approval of the state board of equalization, concerning methods of appraising and valuing land, improvements, personal property, and mobile homes and to require their utilization by assessors in valuing and assessing taxable property. Said manuals, appraisal procedures, and instructions shall be based upon the three approaches to appraisal and the procedures set forth in section 39-1-103 (5) (a). Such manuals, appraisal procedures, and instructions shall be subject to legislative review, the same as rules and regulations, pursuant to section 24-4-103 (8) (d), C.R.S.

(f) To prepare and furnish to assessors all forms required to be completed by them and filed with the property tax administrator;

(g) To call, upon not less than ten days' prior notice, meetings of assessors at some designated place in the state and, upon reasonable notice, to call group or area meetings of two or more assessors;

(h) To prepare and design a basic form for all assessors to use in the assessment of real property which will set forth in detail information to be inserted pertaining to the approaches to appraisal set forth in section 39-1-103 (5) (a);

(i) To determine, whenever the administrator discovers that any taxable property of a public utility or any taxable rail transportation property has been omitted from the assessment roll of any year or series of years, the value of such omitted property. The

administrator shall notify the assessor of such discovery and value. The assessor shall list the same on the assessment roll of the year in which the discovery was made and shall notify the treasurer of any unpaid taxes on such property for prior years.

(j) Repealed.

(k) To prepare and publish guidelines, after consultation with the advisory committee to the property tax administrator and approval of the state board of equalization, concerning the audit and compliance review of oil and gas leasehold properties for property tax purposes, which shall be utilized by assessors, treasurers, and their agents. Such guidelines shall be subject to legislative review, the same as rules and regulations, pursuant to section 24-4-103 (8) (d), C.R.S.

(l) To resolve valuation disputes concerning property or property interests owned or held by the Southern Ute Indian tribe as provided in the taxation compact set forth in section 24-61-102, C.R.S.;

(m) To establish the forms required pursuant to part 2 of article 29 of title 38, C.R.S.

Source: L. 70: R&RE, p. 372, § 1. C.R.S. 1963: § 137-3-9. L. 73: p. 1437, § 1. L. 76: (1)(e) amended, p. 756, § 7, effective July 1. L. 77: (1)(h) added, p. 1750, § 1, effective June 9; (1)(c) R&RE and (1)(e) amended, p. 1733, §§ 7, 9, effective June 20. L. 81: (1)(c) repealed, p. 1398, § 11, effective January 1; (1)(a) amended, p. 1848, § 3, effective January 1, 1982. L. 82: (1)(e) amended, p. 555, § 1, effective January 1, 1984. L. 83: (1)(e) R&RE, p. 1498, § 1, effective April 12; (1)(b) amended, p. 1489, § 2, effective April 21; (1)(h) amended, p. 1483, § 4, effective April 22; (1)(i) and (1)(j) added, pp. 2082, 2083, §§ 1, 1, effective October 13. L. 90: (1)(e) amended, p. 1699, § 26, effective June 9. L. 91: (1)(k) added, p. 1953, § 1, effective January 1, 1992. L. 96: IP(1) and (1)(d) amended, p. 649, § 2, effective May 1; (1)(l) added, p. 1726, § 2, effective June 3. L. 99: (1)(l) amended, p. 629, § 40, effective August 4. L. 2004: (1)(j) repealed, p. 206, § 28, effective August 4. L. 2008: (1)(m) added, p. 452, § 10, effective July 1.

ANNOTATION

State property tax administrator's assessors' reference library manuals are binding on county assessors. Huddleston v. Grand

County Bd. of Equaliz., 913 P.2d 15 (Colo. 1996).

39-2-109.5. Computers for property assessment - state assistance. (Repealed)

Source: L. 83: Entire section added, p. 2083, § 2, effective October 13. L. 2004: Entire section repealed, p. 206, § 29, effective August 4.

39-2-110. Annual school for assessors. To further improvement in appraisal and valuation procedures and methods and understanding and knowledge thereof, the division of property taxation shall conduct annual instruction and discussion sessions in the nature of a school for assessors, their employees, and employees of the division for periods not exceeding fifteen days in length. All costs of conducting such sessions shall be paid by the division, and the necessary travel and subsistence expenses of assessors and their employees while attending such sessions shall be paid by their respective counties. All assessors shall attend this annual school. Each assessor completing this school shall receive a certificate of achievement for his effort.

Source: L. 70: R&RE, p. 373, § 1. C.R.S. 1963: § 137-3-10. L. 75: Entire section amended, p. 1457, § 1, effective June 20.

Cross references: For the definition of "assessor", see § 39-1-102 (2).

39-2-111. Complaints. The administrator shall examine all complaints filed with him wherein it is alleged that a class or subclass of taxable property in a county has not been

appraised or valued as required by law or has been improperly or erroneously valued or that the property tax laws have in any manner been evaded or violated. Complaints shall be in writing and may be filed only by a taxing authority in a county or by any taxpayer. Complaints may be filed only with respect to property located in the county in which the taxing authority levies taxes or in which the taxpayer owns taxable property. If the administrator finds the complaint is justified, he may use his findings as the basis for petitioning the state board of equalization for an order of reappraisal pursuant to section 39-2-114.

Source: L. 70: R&RE, p. 373, § 1. C.R.S. 1963: § 137-3-11. L. 76: Entire section amended, p. 757, § 9, effective January 1, 1977. L. 83: Entire section amended, p. 1490, § 3, effective April 21.

39-2-112. Assessor to appear - when. The property tax administrator may require any assessor to appear before him at any meeting to ascertain whether he has complied with the law in appraising and valuing the taxable property located in his county.

Source: L. 70: R&RE, p. 373, § 1. C.R.S. 1963: § 137-3-12.

Cross references: For the valuation for assessment, see § 39-1-104.

39-2-113. Administrator may intervene. (1) The administrator is authorized to appear as a party in interest in any proceeding before a court or other tribunal in which:

- (a) An abatement or refund of property taxes is sought; or
- (b) A question bearing on a statewide assessment policy is raised.

Source: L. 70: R&RE, p. 373, § 1. C.R.S. 1963: § 137-3-13. L. 76: Entire section R&RE, p. 757, § 10, effective January 1, 1977.

Cross references: For abatement and refund of taxes, see §§ 39-1-113 and 39-10-114.

39-2-114. Reappraisal - when - procedures. (1) Whenever the administrator petitions the state board of equalization for its order of reappraisal of any class or subclass of taxable property for the following taxable year, the administrator shall send a copy of such petition to the assessor of the county in which such class or subclass of taxable property is located. The petition of reappraisal shall include the reasons for such reappraisal, and the administrator has the duty to establish to the satisfaction of the state board of equalization the need for such reappraisal. The state board of equalization shall conduct a hearing on such petition, at which hearing the assessors shall attend and shall give such testimony and present such evidence as the state board of equalization may require.

(2) At the hearing on the petition for reappraisal, the affected county assessor shall have the opportunity to appear, to produce testimony and evidence, and to cross-examine witnesses. The decision of the state board of equalization shall be delivered in writing no later than the close of business on November 15.

(3) If such reappraisal is ordered by the state board of equalization, the property tax administrator shall direct the staff of the division of property taxation, working jointly with the assessor of such county, to reappraise such property, and the value so determined shall be the actual value of the taxable property in such county for the next taxable year. The results of the reappraisal shall be filed with the property tax administrator no later than the close of business on the last working day in May of the year in which the reappraised values shall be effective, and a copy thereof shall be filed with the assessor.

(4) The affected assessor, board of county commissioners, town, city, school district, or special district, or any taxpayer resident therein, or any of them, may appeal the reappraised value to the state board of equalization by petition filed with the state board of equalization no later than the tenth day of June next following. Upon appeal, the assessor and any other

petitioner shall have the right to appear, produce testimony and evidence, and cross-examine witnesses.

(5) The state board of equalization may affirm, rescind, or modify the reappraised values appealed, and shall enter its written order thereof no later than the first day of July next following.

Source: **L. 70:** R&RE, p. 373, § 1. **C.R.S. 1963:** § 137-3-14. **L. 77:** (1) R&RE, p. 1734, § 10, effective June 20. **L. 81:** (1) amended, p. 1398, § 10, effective January 1. **L. 83:** Entire section amended, p. 1490, § 4, effective April 21. **L. 86:** (2) amended, p. 1101, § 2, effective March 26. **L. 89:** (2) amended, p. 1452, § 6, effective June 7.

Cross references: For the duties of the board of assessment appeals, see § 39-2-125; for the determination of actual value, see § 39-1-103.

ANNOTATION

Right to appeal reappraisal limited. This section does not grant an affected assessor or a board of county commissioners the right to appeal the reappraisal of property within his or its

county to the courts. *Bd. of County Comm'rs v. Love*, 172 Colo. 121, 470 P. 2d 861 (1970) (decided under former law).

39-2-115. Review of abstracts of assessment - recommendations. (1) (a) No later than August 25 of each year, each county assessor shall file with the property tax administrator two copies of an abstract of assessment of the county.

(b) Repealed.

(2) Upon receipt of the abstracts of assessment from the assessors of the several counties of the state, the administrator shall examine and review each such abstract. If he finds from the abstract of any county that any or all of the various classes or subclasses of real and personal property located in such county have not been valued for assessment by the use of all manuals, factors, formulas, and other directives required by law, the administrator shall determine the amount of increase or decrease in valuation for assessment of such class or subclass necessary to conform to such requirements and shall file a complaint with the state board of equalization specifying the amount recommended to be added to or deducted from the valuation for assessment of such class or subclass of property in such county for the following taxable year.

(3) No later than October 15 of each year, the property tax administrator shall transmit the abstracts of assessment of the several counties to the state board of equalization together with his recommendations.

Source: **L. 70:** R&RE, p. 374, § 1. **C.R.S. 1963:** § 137-3-15. **L. 77:** (2) R&RE, p. 1734, § 11, effective June 20. **L. 83:** (2) and (3) amended, p. 1491, § 5, effective April 21. **L. 86:** (3) amended, p. 1102, § 3, effective March 26. **L. 89:** (1) and (3) amended, p. 1453, § 7, effective June 7. **L. 93:** (1) amended, p. 1283, § 4, effective June 6. **L. 94:** (1)(b) amended, p. 1645, § 79, effective July 1. **L. 96:** (1)(b) repealed, p. 1199, § 3, effective June 1.

ANNOTATION

Failure to provide hearing and review not deprivation of property. The failure to provide a hearing and a review of recommendations for increases or decreases in valuations for assessment of real or personal property does not con-

stitute a deprivation of property without due process of law. *People ex rel. State Bd. of Equalization v. Hively*, 139 Colo. 49, 336 P.2d 721 (1959) (decided under former law).

39-2-116. Approval of tax abatement or refund. The administrator shall review each application submitted by the board of county commissioners or the board of equalization of any county for abatement or refund of taxes, and, if all of such application is found to be

in proper form and recommended in conformity with the law, the application shall be approved; otherwise, it shall be disapproved, in which case the disapproval may be appealed to the board pursuant to section 39-2-125 (1) (b). If only a portion of such application is found to be in proper form and recommended in conformity with the law, the administrator shall approve such part and disapprove the remainder of the application, in which case the disapproved portion may be appealed to the board pursuant to section 39-2-125 (1) (b).

Source: L. 70: R&RE, p. 374, § 1. C.R.S. 1963: § 137-3-16. L. 77: p. 1734, § 12. L. 81: p. 1842, § 1.

Cross references: For abatement and refund of taxes, see § 39-1-113; for abatement or cancellation of taxes, see § 39-10-114.

ANNOTATION

Board of assessment appeals may conduct de novo review in reviewing taxpayer's appeal from property tax administrator. Bd. of Assessment Appeals v. Valley Country Club, 792 P.2d 299 (Colo. 1990).

By approving taxpayer's petition "conditionally" or otherwise and submitting it to the

property tax administrator for further action, the board of county commissioners' procedural rights as a party ended under the statutory scheme governing abatement and refund proceedings. Huerfano County Bd. of County Comm'rs v. Atlantic Richfield Co., 976 P.2d 893 (Colo. App. 1999).

39-2-117. Applications for exemption - review - annual reports - procedures - rules. (1) (a) (I) Every application filed on or after January 1, 1990, claiming initial exemption of real and personal property from general taxation pursuant to the provisions of sections 39-3-106 to 39-3-113 and 39-3-116 shall be made on forms prescribed and furnished by the administrator, shall contain such information as specified in paragraph (b) of this subsection (1), and shall be signed by the owner of such property or his or her authorized agent under the penalty of perjury in the second degree and, except as otherwise provided in this paragraph (a), shall be accompanied by a payment of one hundred seventy-five dollars, which shall be credited to the property tax exemption fund created in subsection (8) of this section. The administrator shall examine and review each application submitted, and, if it is determined that the exemption therein claimed is justified and in accordance with the intent of the law, the exemption shall be granted, the same to be effective upon such date in the year of application as the administrator shall determine, but in no event shall the exemption apply to any year prior to the year preceding the year in which application is made. The decision of the administrator shall be issued in writing and a copy thereof furnished to the applicant and to the assessor, treasurer, and board of county commissioners of the county in which the property is located.

(II) On all properties for which an application is pending in the office of the administrator, taxes shall not be due and payable until such determination has been made. Such property shall not be listed for the tax sale, and no delinquent interest will be charged on any portion of the exemption that is denied.

(III) No later than June 1 of each year, the administrator shall provide to the assessor, treasurer, and board of county commissioners of each county a list of all applications for property tax exemption currently pending in the office of the administrator.

(b) (I) Any users of real and personal property for which exemption from general taxation is requested pursuant to any of the provisions of sections 39-3-107 to 39-3-113 may be required to provide such information as the property tax administrator determines to be necessary.

(II) Except as otherwise provided in this subparagraph (II), any application filed pursuant to paragraph (a) of this subsection (1) claiming exemption from taxation pursuant to section 39-3-106 or 39-3-106.5 shall contain the following information: The legal description and address of the real property or the address of the personal property being claimed as exempt; the name and address of the owner of such property; the name and telephone number of the agent of such property; the date the owner acquired such property;

the date the owner commenced using the property for religious purposes; a complete list of all uses of the property other than by the owner thereof during the previous twelve months; the total amount of gross income specified in section 39-3-106.5 (1) (b) (I) and the total amount of gross rental income resulting to the owner of such property during the previous twelve months from uses for purposes other than the purposes specified in sections 39-3-106 to 39-3-113; and the total number of hours during the previous twelve months that such property was used for purposes other than the purposes specified in sections 39-3-106 to 39-3-113. For purposes of this subparagraph (II), if the owner did not own the property being claimed as exempt during the entire twelve-month period prior to filing such application, the application shall contain the required information for that portion of the twelve-month period for which such property was owned by the owner making application. Such application shall also include a declaration that sets forth the religious mission and religious purposes of the owner of the property being claimed as exempt and the uses of such property that are in the furtherance of such mission and purposes. Such declaration shall be presumptive as to the religious purposes for which such property is used. If the administrator is unable to determine whether the property qualifies for exemption based solely on the information specified in this subparagraph (II), the administrator may require additional information, but only to the extent that the additional information is necessary to determine the exemption status of the property. The administrator may challenge any declaration included in the application only upon the grounds that the religious mission and purposes are not religious beliefs sincerely held by the owner of such property, that the property being claimed as exempt is not actually used for the purposes set forth in such application, or that the property being claimed as exempt is used for private gain or corporate profit.

(III) Any application filed pursuant to paragraph (a) of this subsection (1) claiming exemption from taxation pursuant to section 39-3-116 shall contain such information specified in subparagraphs (I) and (II) of this paragraph (b) as is applicable for the purposes for which such property is used.

(2) No assessor shall classify any real or personal property as being exempt from taxation pursuant to the provisions of sections 39-3-106 to 39-3-113 or 39-3-116 in any year unless the application for exemption for the current year has been reviewed and has been granted as provided for by law, nor shall any assessor classify any real or personal property as being taxable after having been notified in writing that such property has been determined to be exempt from taxation by the property tax administrator.

(3) (a) (I) On and after January 1, 1990, and no later than April 15 of each year, every owner of real or personal property for which exemption from general taxation has previously been granted shall file a report with the administrator upon forms furnished by the division, containing such information relative to the exempt property as specified in paragraph (b) of this subsection (3), and signed under the penalty of perjury in the second degree. Each such annual report shall be accompanied by a payment of seventy-five dollars, which shall be credited to the property tax exemption fund created in subsection (8) of this section. Each such annual report filed later than April 15, but prior to July 1, shall be accompanied by a late filing fee of two hundred fifty dollars; except that the administrator shall have the authority to waive all or a portion of the late filing fee for good cause shown as determined by the administrator by rules adopted pursuant to subsection (7) of this section. On and after January 1, 1990, every owner of real or personal property for which exemption from general taxation has previously been granted pursuant to the provisions of section 39-3-111 and that is used for any purpose other than the purposes specified in sections 39-3-106 to 39-3-113 for less than two hundred eight hours during the calendar year or if the use of the property for such purposes results in annual gross rental income to such owner of less than twenty-five thousand dollars shall not be required to file any annual report pursuant to the provisions of this subsection (3). In order to claim such exemption, in lieu of such annual report, the owner shall annually file with the administrator a declaration stating that the property is used for such purposes for less than two hundred eight hours during the calendar year or such use results in annual gross rental income to the owner of less than twenty-five thousand dollars.

(II) In the event an annual report is not received by June 1 from an owner of real or personal property for which an exemption was granted for the previous year pursuant to the provisions of sections 39-3-107 to 39-3-113 or 39-3-116, the administrator shall give notice in writing to such property owner by June 15 that failure to comply by July 1 shall operate as a forfeiture of any right to claim exemption of previously exempt property from general taxation for the current year. Failure to timely file such annual report on or before July 1 shall operate as a forfeiture of any right to claim exemption of such property from general taxation for the year in which such failure occurs, unless an application is timely filed and an exemption granted pursuant to the provisions of paragraph (a) of subsection (1) of this section. The administrator shall review each report filed to determine if such property continues to qualify for exemption, and, if it is determined that the property does not so qualify, the owner of such property shall be notified in writing of the disqualification, and the assessor, treasurer, and board of county commissioners of the county in which the property is located shall also be so notified.

(III) In the event an annual report is not received by June 1 from an owner of real or personal property for which an exemption was granted for the previous year pursuant to the provisions of section 39-3-106 or 39-3-106.5, the administrator shall give notice in writing to such property owner by June 15 that failure to file a delinquent report during a twelve-month period commencing the following July 1 shall operate as the forfeiture of any right to claim exemption of previously exempt property from general taxation for the year in which such notice is given. Upon the filing of the delinquent annual report, a late filing fee of two hundred fifty dollars shall be paid, which shall be credited to the property tax exemption fund created in subsection (8) of this section; except that the administrator shall have the authority to waive all or a portion of the late filing fee for good cause shown as determined by the administrator by rules adopted pursuant to subsection (7) of this section. Failure to file the delinquent annual report within the twelve-month period shall result in the forfeiture of any right to claim exemption of such property from general taxation for the year in which such failure to file the annual report first occurred. The administrator shall review each report filed to determine if the property continues to qualify for exemption, and, if it is determined that the property does not so qualify, the owner of the property shall be notified in writing of the disqualification, and the assessor, treasurer, and board of county commissioners of the county in which the property is located shall also be so notified.

(b) (I) Any user of property which has been exempted pursuant to the provisions of sections 39-3-107 to 39-3-113 may be required to provide such information as the property tax administrator determines to be necessary in order to ascertain whether the users and usages of the property are in compliance with the provisions of said sections.

(II) (A) Except as otherwise provided in sub-subparagraph (B) of this subparagraph (II), any annual report filed pursuant to paragraph (a) of this subsection (3) claiming exemption from taxation pursuant to section 39-3-106 or 39-3-106.5 shall contain the following information: The legal description or address of the property being claimed as exempt; the name and address of the owner of such property; a complete list of all uses of such property other than by the owner thereof during the previous calendar year; the amount of total gross income specified in section 39-3-106.5 (1) (b) (I) and the total amount of gross rental income resulting from uses of such property that are not for the purposes set forth in sections 39-3-106 to 39-3-113; and the total number of hours that such property was used for purposes other than the purposes specified in sections 39-3-106 to 39-3-113. Such annual report shall also include a declaration of the religious mission and purposes of the owner of such property claimed as being exempt and the uses of such property that are in the furtherance of such mission and purposes. Such declaration shall be presumptive as to the religious mission and religious purposes of the owner of such property. If the administrator is unable to determine whether the property continues to qualify for exemption based solely on the information specified in this subparagraph (II), the administrator may require additional information, but only to the extent that the additional information is necessary to determine the exemption status of the property. The administrator may challenge any declaration included in such annual report only upon the grounds that the religious mission and purposes are not religious beliefs sincerely held by the owner of such property, that such property is not actually used for the purposes set forth in the annual

report, or that the property being claimed as exempt is used for private gain or corporate profit.

(B) For the purposes of sub-subparagraph (A) of this subparagraph (II), if the owner of property being claimed as exempt did not own such property during the entire previous calendar year, the annual report filed by such owner shall contain the information required in sub-subparagraph (A) of this subparagraph (II) for that portion of the previous calendar year during which such property was owned by such owner.

(III) Any annual report filed pursuant to paragraph (a) of this subsection (3) claiming exemption from taxation pursuant to section 39-3-116 shall contain such information specified in subparagraphs (I) and (II) of this paragraph (b) as is applicable for the purposes for which such property is used.

(4) If, subsequent to the time that exemption of any property was initially granted or annually renewed, as provided in subsections (1) and (3) of this section, it is determined that such exemption was granted or renewed as the result of false or misleading information contained in the initial application, the annual report, or any false information provided by owners or users of such property, then the property tax administrator shall revoke the exemption, and taxes shall be assessed against such property for the year or years affected by such false or misleading information, and all delinquent interest provided by law shall apply to such taxes.

(5) (a) (I) If the administrator tentatively determines that the property does not so qualify, except for the disqualification for failure to file an annual report required in subsection (3) of this section, he shall notify, by certified mail, the owner of such property of his tentative determination. The administrator shall also notify the owner of the owner's right to a public hearing, as provided for in subparagraph (II) of this paragraph (a).

(II) Within thirty days after the issuance of a tentative determination, the owner may request a public hearing regarding the determination. Upon the making of such a request, the administrator or his designees shall provide said owner with a public hearing at which said owner and any users of the property other than the owner, if their use is relevant to the determination of whether the property is exempt, shall be heard if they so desire. Such hearing shall be held no later than ninety days following the issuance of the tentative determination.

(III) Upon the conclusion of such hearing, the administrator shall provide the owner and any users sixty days within which to comply, so as to retain the exemption. If the owner fails to comply within sixty days, the administrator shall notify the owner in writing that the property has been disqualified.

(IV) The owner may waive his right to a public hearing by filing with the administrator a written statement that said right is waived. Upon receipt of such waiver, the administrator shall issue a final determination, in writing, which notifies the owner that the property does not qualify for exemption.

(V) If the owner does not request a public hearing, as provided for in subparagraph (II) of this paragraph (a), or does not file a waiver of his right to a public hearing, as provided for in subparagraph (IV) of this paragraph (a), the administrator shall provide the owner sixty days from the issuance of the tentative determination to file any additional information relevant to the determination of whether the property is exempt. At the conclusion of such sixty-day period, the administrator shall issue a final determination, in writing, which notifies the owner whether the property qualifies for exemption.

(b) An appeal from any decision of the administrator may be taken by the board of county commissioners of the county wherein such property is located, or by any owner of taxable property in such county, or by the owner of the property for which exemption is claimed if exemption has been denied or revoked in full or in part. Any such appeal shall be taken to the board of assessment appeals pursuant to the provisions of section 39-2-125 no later than thirty days following the decision of the administrator.

(6) If the decision of the board is against the petitioner, the petitioner may petition the court of appeals for judicial review thereof according to the Colorado appellate rules and the provisions of section 24-4-106 (11), C.R.S. If the decision of the board is against the respondent, the respondent, upon the recommendation of the board that it is a matter of

statewide concern, may petition the court of appeals for judicial review according to the Colorado appellate rules and the provisions of section 24-4-106 (11), C.R.S.

(7) The administrator shall adopt rules to implement the provisions of this section pursuant to the provisions of article 4 of title 24, C.R.S., including any rules necessary to specify what shall qualify as "good cause shown" for purposes of waiving all or a portion of the late filing fees specified in subparagraphs (I) and (III) of paragraph (a) of subsection (3) of this section.

(8) All fees collected pursuant to this section shall be transmitted to the state treasurer who shall credit such revenues to the property tax exemption fund, which fund is hereby created in the state treasury. The moneys in the fund shall be subject to annual appropriation by the general assembly for the direct and indirect costs of the administration of this article.

Source: **L. 70:** R&RE, p. 374, § 1. **C.R.S. 1963:** § 137-3-17. **L. 72:** p. 568, § 49. **L. 83:** (6) added, p. 2086, § 1, effective October 13. **L. 86:** (1) to (4) amended, p. 1104, § 2, effective May 16. **L. 87:** (1)(a), (3)(a), and (5) amended, pp. 1399, 1400, §§ 1, 2, effective July 1. **L. 88:** (1)(a) and (3)(a) amended, p. 1292, § 25, effective May 23. **L. 89:** (1), (2), and (3)(b) amended, p. 1482, § 6, effective April 23; (1) to (3) amended and (7) added, p. 1486, § 4, effective June 7. **L. 90:** (6) amended, p. 1689, § 6, effective June 9. **L. 91:** (1)(b)(II), (3)(b)(II), and (5)(a) amended, pp. 1960, 1955, §§ 7, 1, effective June 7. **L. 92:** (1)(a) and (4) amended, p. 2222, § 2, effective April 9. **L. 2003:** (1)(b)(II) and (3)(b)(II)(A) amended, p. 866, § 1, effective April 7; (1)(a), (3)(a)(I), (3)(a)(III), and (5)(b) amended and (8) added, p. 1465, § 3, effective July 1. **L. 2009:** (1)(a) amended, (SB 09-042), ch. 176, p. 780, § 2, effective August 5. **L. 2010:** (1)(a)(I), (3)(a)(I), (3)(a)(III), and (7) amended, (HB 10-1386), ch. 328, p. 1516, § 1, effective July 1. **L. 2011:** (3)(a)(I) amended, (HB 11-1010), ch. 275, p. 1239, § 1, effective August 10.

Cross references: For perjury in the second degree and the penalty therefor, see §§ 18-8-503 and 18-1.3-501.

ANNOTATION

Law reviews. For article, "Property Tax Exemptions for Religious And Nonprofit Organizations", see 18 Colo. Law. 1939 (1989). For article, "Colorado State and Local Tax Exemptions for Charitable Organizations-Part I", see 28 Colo. Law. 57 (November 1999).

Exemption from property tax is initiated at state level, rather than county level, by filing an application for exemption with the property tax administrator. *West-Brandt Found., Inc. v. Carper*, 199 Colo. 334, 608 P.2d 339 (1980).

Property tax exemptions are determined on an annual basis under the property tax scheme, based on the use of the property in each tax year. *St. Mark Coptic Orthodox Church v. State Bd. of Assessment Appeals*, 762 P.2d 775 (Colo. App. 1988); *Pilgrim Rest Baptist Church, Inc. v. Prop. Tax Adm'r*, 971 P.2d 270 (Colo. App. 1998).

Implicit within the property tax scheme is a requirement that in order for the property to qualify for tax exemption for that tax year, there must be at least some actual use of the property for tax exempt purposes in that tax year. *Pilgrim Rest Baptist Church, Inc. v. Prop. Tax Adm'r*, 971 P.2d 270 (Colo. App. 1998).

County not indispensable party in appeal of exemption denial. The county in which the affected property is located is not an indispens-

able party in an appeal to the state board of assessment appeals of the property tax administrator's denial of exemption. *West-Brandt Found., Inc. v. Carper*, 199 Colo. 334, 608 P.2d 339 (1980).

The procedure for determining the running of the thirty-day period in this section prevails over § 24-4-105 which deals generally with administrative proceedings. *Colo. Rocky Mtn. Sch., Inc. v. Shriver*, 689 P.2d 651 (Colo. App. 1984).

Under subsection (6), only the district court in the county where the property is situated has subject matter jurisdiction over appeals of administrative decisions concerning exemptions. The district court in which the property was situated did not have subject matter jurisdiction over a case on appeal because Plaintiff did not timely perfect the review proceedings in said court. Instead, the complaint for review was filed in another district court which did not have subject matter jurisdiction and which attempted to transfer the case to the proper district court. *Mile High United Way v. Assessment App.*, 801 P.2d 3 (Colo. App. 1990) (decided under law in effect prior to 1990 amendments).

Legislative grant of authority is granted to the administrator under the plain language of

subsection (6) to seek review of adverse board decision concerning property tax years beginning on and after January 1, 1984. *Maurer v. Young Life*, 779 P.2d 1317 (Colo. 1989);

Maurer v. Loyal Order of Moose Lodge, 779 P.2d 1345 (Colo. 1989); *Maurer v. Denver Urban Economic Dev.*, 781 P.2d 111 (Colo. App. 1989).

39-2-118. Recommendations to governor. No later than the first day of December of each year, the property tax administrator, in cooperation with a committee from the Colorado assessors association, shall submit to the governor for transmittal to the general assembly any recommendations concerning the administration and enforcement of the property tax laws which he deems necessary and in the public interest.

Source: L. 70: R&RE, p. 375, § 1. C.R.S. 1963: § 137-3-18.

39-2-119. Annual report. As soon after the end of each calendar year as may be practicable, the property tax administrator shall prepare a report covering the activities of the division of property taxation during such calendar year. Such report shall set forth the aggregate valuation for assessment of all taxable property in the state and in each county thereof, by classes and subclasses, for the two latest calendar years, the levies imposed by each political subdivision during the preceding calendar year, and the aggregate amount of taxes produced by such levies in the state and each county thereof, together with such other information as the administrator deems necessary. Such report shall be published in accordance with the provisions of section 24-1-136, C.R.S. Copies of the report shall be furnished to the governor and made available for distribution to the public.

Source: L. 70: R&RE, p. 375, § 1. C.R.S. 1963: § 137-3-19. L. 83: Entire section amended, p. 844, § 78, effective July 1. L. 2002: Entire section amended, p. 862, § 3, effective August 7.

39-2-120. Powers of property tax administrator. The property tax administrator shall be authorized to certify official acts of the division of property taxation, to administer oaths, issue subpoenas, compel attendance of witnesses and the production of books, accounts, and records, and to cause depositions to be taken. In case any person fails to comply with any subpoena or refuses to testify on any matter upon which he may be lawfully questioned, any court having jurisdiction in the matter may, upon application of the property tax administrator, compel obedience in the manner provided by law.

Source: L. 70: R&RE, p. 376, § 1. C.R.S. 1963: § 137-3-20.

39-2-121. Enforcement of orders. The property tax administrator may compel compliance with his unappealed orders or, after approval by the board of assessment appeals of appealed orders, by proceedings in mandamus, injunction, or by other appropriate civil remedies.

Source: L. 70: R&RE, p. 376, § 1. C.R.S. 1963: § 137-3-21.

39-2-122. Notice prior to injunction. No injunction shall be issued suspending or staying any order of the property tax administrator except upon ten days' notice to the property tax administrator of the application for such injunction and a hearing thereon.

Source: L. 70: R&RE, p. 376, § 1. C.R.S. 1963: § 137-3-22.

39-2-123. Board of assessment appeals created - members - compensation. (1) On and after July 1, 1971, the Colorado tax commission shall be known as the board of assessment appeals, which agency is hereby created within the department of local affairs. The board shall be a quasi-judicial tribunal.

(2) Effective July 1, 1991, the existing board of assessment appeals is abolished, and the terms of members of the board then serving are terminated. Effective July 1, 1991, except as otherwise provided in section 39-2-125 (1) (c) (I), the new board shall be comprised of three members, who shall be appointed by the governor with the consent of the senate. Members of the board shall be experienced in property valuation and taxation and shall be public employees, as defined in section 24-10-103 (4) (a), C.R.S., who are not subject to the state personnel system laws. One of such members shall be or shall have been, within the five years immediately preceding the date of initial appointment, actively engaged in agriculture. On and after June 1, 1993, members shall be registered, licensed, or certificated pursuant to the provisions of part 7 of article 61 of title 12, C.R.S., and, if any member fails to become so registered, licensed, or certificated by said date, the office of such member shall be deemed to be vacated and shall be filled in the same manner as other vacancies. Initial appointments to the board shall be as follows: One member shall be appointed for a term of two years, and two members shall be appointed for terms of four years. Thereafter, appointments to the board shall be for terms of four years each. Service on the board shall be at the pleasure of the governor, who may appoint a replacement to serve for the unexpired term of any member. Such replacement shall be appointed with the consent of the senate. Any other vacancies on the board shall be filled by appointment by the governor with the consent of the senate for the unexpired term.

(3) In addition to any other compensation provided for by law, members of the board shall be compensated one hundred fifty dollars per diem. In addition, members of the board who do not reside in the Denver metropolitan area, which consists of the counties of Adams, Arapahoe, Boulder, Clear Creek, Denver, Douglas, Gilpin, and Jefferson, shall be reimbursed for their actual and necessary travel expenses as determined by the executive director of the department of local affairs. Per diem compensation not to exceed two hundred twenty days in any calendar year shall be paid only when the board is in session or when any member thereof conducts a hearing pursuant to section 39-2-127. The board shall be in session when it determines that it is necessary or as directed by the executive director of the department of local affairs.

(4) The board of assessment appeals shall exercise its powers, duties, and functions under the department of local affairs as if it were transferred to said department by a **type 1** transfer under the provisions of the "Administrative Organization Act of 1968".

Source: **L. 70:** R&RE, p. 376, § 1. **C.R.S. 1963:** § 137-3-23. **L. 76:** (3) amended, p. 757, § 11, January 1, 1977. **L. 77:** (2) amended, p. 1735, § 13, effective June 20. **L. 83:** (3) amended, p. 1500, § 1, effective May 26. **L. 85:** (3) amended, p. 1219, § 2, effective March 23; (3) amended, p. 1228, § 1, effective July 1. **L. 87:** (2) amended, p. 913, § 30, effective June 15. **L. 88:** (2) amended, p. 1296, § 1, effective April 29. **L. 89:** (2) amended, p. 1453, § 8, effective June 7. **L. 91:** (2) and (3) amended, p. 1977, § 1, effective July 1. **L. 92:** (2) amended, p. 2206, § 2, effective June 3.

Editor's note: Amendments to subsection (3) by House Bill 85-1105 and House Bill 85-1106 were harmonized.

Cross references: For the "Administrative Organization Act of 1968", see article 1 of title 24.

ANNOTATION

Law reviews. For article, "Appealing Property Tax Assessments", see 15 Colo. Law. 798 (1986).

Board's rules and regulations were not abolished by legislation abolishing existing board and immediately creating a newly constituted one, nor was board required to re-enact, ratify, or promulgate new rules and regulations, since annual legislation by the general assembly specifically postponing the expiration of the

board's rules effectively postponed the rules of the "old" board and continued their application under the "new" board. 1st Am. Sav. Bank v. Boulder County, 888 P.2d 360 (Colo. App. 1994).

Board rule requiring parties to exchange witness lists ten days prior to hearing has a legitimate relationship to express statutory provisions since need for the rule is paramount where the board's procedures do not allow dis-

covery. 1st Am. Sav. Bank v. Boulder County, 888 P.2d 360 (Colo. App. 1994).

Board abused its discretion in denying the right to call a witness it had inadvertently omitted from its witness list where taxpayer's

attorney had implicit knowledge of the witness and subject matter of the witness' testimony and no prejudice was claimed if the testimony was allowed. 1st Am. Sav. Bank v. Boulder County, 888 P.2d 360 (Colo. App. 1994).

39-2-124. Executive director to furnish employees and clerical assistance. Clerical assistance and such employees as are necessary shall be furnished for the board by the executive director of the department of local affairs.

Source: L. 70: R&RE, p. 377, § 1. C.R.S. 1963: § 137-3-24.

39-2-125. Duties of the board. (1) The board of assessment appeals shall perform the following duties, such performance to be in accordance with the applicable provisions of article 4 of title 24, C.R.S.:

(a) Adopt procedures of practice before and procedures of review by the board;

(b) (I) Hear appeals from orders and decisions of the property tax administrator filed not later than thirty days after the entry of any such order or decision.

(II) Such hearings shall include evidence as to the rationale of such order or decision and the detailed data in support thereof.

(c) Hear appeals from decisions of county boards of equalization filed not later than thirty days after the entry of any such decision. Appeal decisions shall be rendered within thirty days after the date of hearing or by the last day of the same calendar year, whichever is the earlier date. However, if, as a result of an extraordinary work load, all hearings cannot be completed before the last day of the same calendar year, the general assembly may, by appropriation, provide for the following:

(I) The appointment of up to six additional members to the board in the same manner as specified in section 39-2-123 (2). Such members shall satisfy such qualifications and shall be entitled to such compensation as are specified in section 39-2-123. Such additional members shall be appointed for terms of one state fiscal year each.

(II) The authorization for the board to schedule hearings for a period of time not to exceed the time for which such appropriation is made; and

(III) The hiring of additional personnel on a contract basis for the members of the board appointed pursuant to subparagraph (I) of this paragraph (c) and to assist in handling such caseload.

(d) Repealed.

(e) Hear appeals from determinations by county assessors when a county board of equalization or an assessor has failed to respond within the time provided by statute to an appeal properly filed by a taxpayer;

(f) Hear appeals from decisions of boards of county commissioners filed not later than thirty days after the entry of any such decision when a claim for refund or abatement of taxes is denied in full or in part;

(g) Repealed.

(h) Collect any filing fee that shall accompany a taxpayer's request for a hearing before the board pursuant to this section. All fees collected by the board shall be transmitted to the state treasurer, who shall credit the same to the general fund. Any request for a hearing before the board pursuant to sections 39-2-117 (5) (b), 39-4-108 (8), 39-8-108 (1), and 39-10-114.5 (1) shall be accompanied by a nonrefundable filing fee as follows:

(I) For any person other than a taxpayer pro se, a fee of one hundred one dollars and twenty-five cents for each tract, parcel, or lot of real property and for each schedule of personal property included in such request; except that, if any request for a hearing before the board involves more than one tract, parcel, or lot owned by the same taxpayer and involves the same issue regarding the valuation of such real property, only one filing fee shall be required for such request for a hearing.

(II) For any person who is a taxpayer pro se, for the first two requests for a hearing within a fiscal year, the taxpayer shall not be required to pay a filing fee, and for each additional request within such fiscal year, a fee of thirty-three dollars and seventy-five cents

for each tract, parcel, or lot of real property, and for each schedule of personal property included in such request; except that, if any request for a hearing before the board involves more than one tract, parcel, or lot owned by the same taxpayer and involves the same issue regarding the valuation of such real property, only one filing fee shall be required for such request for a hearing.

(1.5) As used in this section, notwithstanding any other law, “taxpayer pro se” includes the trustee of a trust.

(2) Complaints filed by the property tax administrator shall be advanced on the calendar and shall take precedence over other matters pending before the board.

(3) Effective January 1, 1983, the consideration of a property’s market value in the ordinary course of trade and the comparison of a property with other properties of known or recognized value by the board when considering the market approach to appraisal in its review of the determination of a property’s actual value are subject to the provisions of section 39-1-103 (8).

Source: L. 70: R&RE, p. 377, § 1. L. 71: p. 1245, § 1. C.R.S. 1963: § 137-3-25. L. 73: p. 1438, § 1. L. 76: (1)(c) amended, p. 757, § 12, effective January 1, 1977. L. 77: (1)(f) amended and (3) added, p. 1735, §§ 14, 15, effective June 20. L. 79: (1)(g) added, p. 1461, § 1, effective July 1. L. 81: (1)(f) amended, p. 1843, § 1, effective May 18; (3) amended, p. 1831, § 4, effective June 12. L. 83: (1)(d)(I) repealed, p. 1491, § 7, effective April 21; (3) amended, p. 1483, § 5, effective April 22; (1)(d) repealed, p. 1508, § 5, effective June 2; (1)(f) amended, p. 2086, § 2, effective October 13. L. 84: (1)(c) amended, p. 1001, § 3, effective March 5. L. 85: (1)(c) amended, p. 1219, § 1, effective March 24. L. 88: (1)(c) amended, p. 1296, § 2, effective April 29. L. 90: (1)(c)(I) amended, p. 1709, § 1, effective May 22. L. 91: (1)(c)(I) amended, p. 1978, § 2, effective July 1. L. 92: IP(1) amended and (1)(h) added, p. 2207, § 3, effective June 3. L. 2002: (1)(g) repealed, p. 1361, § 15, effective July 1. L. 2003: IP(1) and (1)(h) amended, p. 1465, § 2, effective July 1. L. 2008: (1)(h) amended, p. 2147, § 25, effective June 4. L. 2012: (1.5) added, (HB 12-1307), ch. 216, p. 929, § 2, effective August 8.

Cross references: (1) For the legislative declaration contained in the 2008 act amending subsection (1)(h), see section 1 of chapter 417, Session Laws of Colorado 2008.

(2) For the legislative declaration in the 2012 act adding subsection (1.5), see section 1 of chapter 216, Session Laws of Colorado 2012.

ANNOTATION

Law reviews. For article, “Property Tax Assessments in Colorado”, see 12 Colo. Law. 563 (1983). For article, “Appealing Property Tax Assessments”, see 15 Colo. Law. 798 (1986). For article, “Property Tax Litigation Before the Board of Assessment Appeals”, see 35 Colo. Law. 87 (August 2006).

Thirty-day requirements of subsection (1)(c). The initial 30-day requirement in subsection (1)(c) relates to the filing of the appeal, and the subsequent one to the rendering of the decision following the hearing before the appeals board. *Honeywell Info. Systems v. Bd. of Assessment Appeals*, 654 P.2d 337 (Colo. App. 1982).

The procedure for determining the running of the 30-day period in this section prevails over § 24-4-105 which deals generally with administrative proceedings. *Colo. Rocky Mtn. Sch., Inc. v. Shriver*, 689 P.2d 651 (Colo. App. 1984).

Board of assessment appeals may conduct a de novo review in reviewing a taxpayer’s

appeal from property tax administrator. *Bd. of Assessment Appeals v. Valley Country Club*, 792 P.2d 299 (Colo. 1990).

Board of assessment appeals has jurisdiction to hear appeals from the county board. Language mandating that the board hear appeals from the county board’s denial of an abatement is based, by necessity, on a concurrent right of the taxpayer to appeal such denial to the board of assessment appeals. *5050 S. Broadway Corporation v. Arapahoe County Bd. of Comm’rs*, 815 P.2d 966 (Colo. App. 1991).

Date of presentation of county board of equalization’s resolutions constitutes date of entry for purposes of computing 30-day time period. *BQP Industries v. State Bd. of Equalization*, 694 P.2d 337 (Colo. App. 1984).

Non-compliance with the 30-day requirement of subsection (1)(c) should be avoided, but it will not constitute reversible error in the absence of any demonstrated damage or prejudice to the taxpayer. *Burns v. Bd. of Assessment Appeals*, 820 P.2d 1175 (Colo. App. 1991).

The board's action on taxpayer's administrative appeal is not limited to review of any previous action taken, rather the board is authorized to conduct de novo evidentiary proceedings on the merits in every matter before it including administrative appeals taken from boards of county commissioners in abatement and refund proceedings. *D.C. Burns Realty v. Jefferson County*, 849 P.2d 900 (Colo. App. 1992).

Apart from timely filing requirement, there are no other statutory jurisdictional requirements for taking administrative appeals before the BAA. *Fleisher-Smyth v. Bd. of Assessment App.*, 865 P.2d 922 (Colo. App. 1993).

Applied in *West-Brandt Found., Inc. v. Carper*, 199 Colo. 334, 608 P.2d 339 (1980); *Lucchesi v. State*, 807 P.2d 1185 (Colo. App. 1990).

39-2-126. Delaying effect of decision - when. If the finality of a decision of the board of assessment appeals is suspended until after the last day of the calendar year by a pending judicial review, the property tax valuations for the current year shall be those established by the administrator as to utilities under the provisions of article 4 of this title, or by the county assessor or those approved by the county board of equalization, subject to the refund provisions of section 39-8-109.

Source: L. 70: R&RE, p. 377, § 1. L. 71: p. 1245, § 2. C.R.S. 1963: § 137-3-26.

39-2-127. Board of assessment appeals meetings - proceedings - representation before board. (1) The board of assessment appeals shall maintain its headquarters in the city and county of Denver but may transact its official business at any other place within the state. All its sessions shall be open to the public, and full and correct minutes thereof shall be kept, and such minutes shall be a public record open to public inspection.

(2) At the direction of the chairman and with the agreement of the parties before the board, one or more of the members of the board of assessment appeals may conduct hearings in Denver or in a county of closer location to the subject property, administer oaths, examine witnesses, receive evidence, issue subpoenas, and render preliminary decisions subject to concurrence and modification by agreement of at least two members of the board. An additional board member may be added after a hearing to review the evidence and hearing transcript or recording and render a decision in the event the board members who conducted the hearing are unable to reach a decision.

(3) Upon request of any member of the board, legal counsel provided by the office of the attorney general shall attend hearings on appeals before the board and shall advise the board as to matters of procedure, evidence, and law arising in the course of such appeals. Upon the board's own motion, legal counsel shall provide other legal services to the board. When the state property tax administrator is a party to the appeal, such legal counsel shall not be the same legal counsel who advises or represents the state property tax administrator at proceedings before the board.

(4) Any person who is a party in a proceeding before the board may appear on his or her own behalf or be represented by an attorney admitted to practice law in this state or by any other individual of his or her choice. A trust may be represented by an attorney admitted to practice law in this state, by the trustee of the trust, or by the trustee's designee.

(5) The board may permit, in its discretion and upon prior written application, the intervention of another affected party in a matter pending before the board. The board may limit or restrict the participation of an intervenor in such manner as the board, in its discretion, orders.

Source: L. 70: R&RE, p. 377, § 1. L. 71: p. 1245, § 3. C.R.S. 1963: § 137-3-27. L. 85: (2) amended and (3) added, p. 1221, § 1, effective July 1. L. 88: (2) amended and (4) added, p. 1297, § 3, effective April 29. L. 2011: (2) amended and (5) added, (HB 11-1011), ch. 15, p. 41, § 1, effective August 10. L. 2012: (4) amended, (HB 12-1307), ch. 216, p. 929, § 3, effective August 8.

Cross references: For the legislative declaration in the 2012 act amending subsection (4), see section 1 of chapter 216, Session Laws of Colorado 2012.

39-2-128. Board of assessment appeals may issue orders. The board of assessment appeals may issue such orders as it deems necessary to ascertain facts and to carry out its decisions, and any such order directed to a county assessor or a county board of equalization shall be enforceable in the district court of the county upon application of the property tax administrator.

Source: L. 70: R&RE, p. 377, § 1. C.R.S. 1963: § 137-3-28. L. 83: Entire section amended, p. 1491, § 6, effective April 21.

39-2-129. Advisory committee to the property tax administrator created. (1) There is hereby created in the department of local affairs the advisory committee to the property tax administrator. Said advisory committee shall exercise its powers and perform its duties and functions under the department of local affairs as if it were transferred to said department by a **type 1** transfer under the provisions of the "Administrative Organization Act of 1968", article 1 of title 24, C.R.S.

(2) Repealed.

Source: L. 76: Entire section added, p. 755, § 6, effective July 1. L. 86: Entire section amended, p. 426, § 62, effective March 26. L. 93: (2) repealed, p. 675, § 12, effective May 1.

39-2-130. Membership of the advisory committee - terms - compensation - meetings. (1) Said advisory committee shall be comprised of the following five members, no more than three of whom shall be affiliated with the same political party and all of whom shall be appointed by the governor with the consent of the senate:

(a) One assessor and one nonassessor appointed from the counties of seventy-five thousand or more population according to the most recent federal census;

(b) One assessor and one nonassessor appointed from the counties of less than seventy-five thousand population according to the most recent federal census; and

(c) One nonassessor from the western slope.

(2) (a) The governor shall appoint one of the nonassessor members as chairman of the advisory committee.

(b) The governor shall appoint the assessor members from among the certified assessors recommended by the Colorado assessors association.

(3) Initially, two members shall be appointed to the advisory committee for two-year terms and three members for four-year terms. Thereafter, appointments to the advisory committee shall be for terms of four years each. Vacancies on the advisory committee shall be filled by appointment of the governor for the unexpired term.

(4) Members of said committee shall be compensated on a per diem allowance basis at the rate of thirty-five dollars per day and shall be reimbursed for their actual and necessary expenses. Per diem compensation, not to exceed thirty days in any calendar year, shall be paid only when the advisory committee is in session.

(5) The advisory committee shall meet at least quarterly but may meet more frequently upon call of the chairman and may hold hearings as deemed necessary. A quorum of at least three members shall be required to conduct official business.

(6) Repealed.

Source: L. 76: Entire section added, p. 755, § 6, effective July 1. L. 86: (6) added, p. 426, § 63, effective March 26. L. 93: (6) repealed, p. 1792, § 86, effective June 6.

39-2-131. Function of the committee. (1) (a) It is said committee's function and it shall have and exercise the authority, prior to publication, to review:

(I) Manuals or any part thereof, appraisal procedures, instructions, and guidelines prepared and published by the administrator pursuant to section 39-2-109 (1) (e) and based upon the approaches to appraisal set forth in section 39-1-103 (5) (a) and pursuant to section 39-2-109 (1) (k); and

(II) Forms, notices, and records approved or prescribed pursuant to the authority of the property tax administrator set forth in section 39-2-109 (1) (d).

(b) Upon completion of such review, said committee shall submit such manuals, appraisal procedures, instructions, guidelines, forms, notices, and records and its recommendations to the state board of equalization for approval or disapproval pursuant to section 39-9-103 (10).

(2) Repealed.

Source: **L. 76:** Entire section added, p. 756, § 6, effective July 1. **L. 83:** Entire section amended, p. 1483, § 6, effective April 22. **L. 86:** Entire section amended, p. 426, § 64, effective March 26. **L. 90:** (1) amended, p. 1699, § 27, effective June 9. **L. 91:** (1) amended, p. 1953, § 2, effective January 1, 1992. **L. 93:** (2) repealed, p. 1792, § 87, effective June 6.

Exemptions

ARTICLE 3

Exemptions

Editor’s note: This article was repealed and reenacted in 1964 and was subsequently repealed and reenacted in 1989, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1989, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume and the editor’s note before the article 1 heading. Former C.R.S. section numbers prior to 1989 are shown in editor’s notes following those sections that were relocated.

Cross references: For applications for exemptions, see § 39-2-117.

Law reviews: For article, “Survey of Colorado Tax Liens”, see 14 Colo. Law. 1765 (1985); for article, “Property Tax Exemptions for Religious and Nonprofit Organizations”, see 18 Colo. Law. 1939 (1989); for article, “A Survey of the Law of Colorado Nonprofit Entities”, see 27 Colo. Law. 5 (April 1998).

PART 1

PROPERTY EXEMPT FROM TAXATION			
		39-3-108.5.	poses - exemption - limitations.
39-3-101.	Legislative declaration - presumption of charitable purpose.	39-3-109.	Property - community corrections facility - exemption.
39-3-102.	Household furnishings - exemption.		Residential property - integral part of tax-exempt entities - charitable purposes - exemption - limitations.
39-3-103.	Personal effects - exemption.	39-3-110.	Property - integral part of child care center - charitable purposes - exemption - limitations.
39-3-104.	Ditches, canals, and flumes - exemption.		
39-3-105.	Public libraries - governments - school districts - exemption.	39-3-111.	Property - used by fraternal or veterans’ organization - charitable purposes - exemption - limitations.
39-3-106.	Property - religious purposes - exemption - legislative declaration.	39-3-111.5.	Property - health care services - charitable purposes - exemption - limitations.
39-3-106.5.	Tax-exempt property - incidental use - exemption - limitations.	39-3-112.	Definitions - residential property - orphanage - low-income elderly or disabled - homeless or abused - low-income households - charitable purposes - exemption - limitations.
39-3-107.	Property - not-for-profit schools - exemption.		
39-3-108.	Property - nonresidential - health care facility - water company - charitable pur-		

39-3-112.5.	Residential property - homeless - charitable purposes - exempt - limitations.		exemption - limitation - exception.
39-3-113.	Residential property - while being constructed - charitable purposes - exemption - limitations.	39-3-127.	County fair property - exemption - limitation.
		39-3-128.	Exempt property listed and valued.
39-3-113.5	Property acquired by nonprofit housing provider for low-income housing - use for charitable purpose - exemption - limitations - definitions.	39-3-129.	Proportional valuation - exempt property.
39-3-114.	Burden - claim for charitable exemption.	39-3-130.	Change in tax status of property - effective date - tax liability.
39-3-114.5.	Charitable exemption - owner claiming federal tax credit - fee in lieu of school district tax.	39-3-131.	Entire property becomes tax-exempt.
39-3-115.	Statutes not applicable.	39-3-132.	Portion of property becomes tax-exempt.
39-3-116.	Combination use of property - charitable, religious, and educational purposes - exemption - limitations.	39-3-133.	Payment of property taxes extinguishes lien.
39-3-117.	Cemeteries - not-for-profit - exemption.	39-3-134.	Condemnation by tax-exempt agency - duties of treasurer.
39-3-118.	Intangible personal property - exemption.	39-3-135.	Taxation of exempt property - taxes not to become lien. (Repealed)
39-3-118.5.	Business personal property - exemption.	39-3-136.	Legislative declaration - taxation of exempt property - possessory interests. (Repealed)
39-3-119.	Inventories - materials and supplies - held for consumption or primarily for sale - exemption.	39-3-137.	Organizations with tax-exempt status - forgiveness of taxes owed.
39-3-119.5.	Personal property - exemption - definitions.		PART 2
39-3-120.	Livestock - exemption.		PROPERTY TAX EXEMPTION FOR QUALIFYING SENIORS AND DISABLED VETERANS
39-3-121.	Agricultural and livestock products - exemption.	39-3-201.	Legislative declaration.
39-3-122.	Agricultural equipment used in production of agricultural products - exemption.	39-3-202.	Definitions.
39-3-123.	Works of art, literary materials, and artifacts - on loan - exemption - limitations - definitions.	39-3-203.	Property tax exemption - qualifications.
39-3-124.	Property used by state entity - installment sales or lease agreement - lease-purchase or leveraged lease agreement - exemption.	39-3-204.	Notice of property tax exemption.
39-3-125.	Church property - used as residence - exemption - limitation. (Repealed)	39-3-205.	Exemption applications - penalty for providing false information - confidentiality.
39-3-126.	Horticultural improvements -	39-3-206.	Notice to individuals returning incomplete or nonqualifying exemption applications - denial of exemption - administrative remedies.
		39-3-207.	Reporting of exemptions - reimbursement to local governmental entities - transfer of unencumbered balances.
		39-3-208.	Auditing of property tax exemption program.

PART 1

PROPERTY EXEMPT FROM TAXATION

39-3-101. Legislative declaration - presumption of charitable purpose. The general assembly recognizes that only the judiciary may make a final decision as to whether or not any given property is used for charitable purposes within the meaning of the Colorado

constitution; nevertheless, in order to guide members of the public and public officials alike in the making of their day-to-day decisions and to assist in the avoidance of litigation, the general assembly hereby finds, declares, and determines that the uses of property which are set forth in this part 1 as uses for charitable purposes benefit the people of Colorado and lessen the burdens of government by performing services which government would otherwise be required to perform. Therefore, property used for such purposes shall be presumed to be owned and used solely and exclusively for strictly charitable purposes and not for private gain or corporate profit, and, consequently, property used for such purposes is entitled to be exempt from the levy and collection of property tax pursuant to the provisions of this part 1 and the Colorado constitution. This legislative finding, declaration, determination, and presumption shall not be questioned by the administrator and shall be entitled to great weight in any and every court.

Source: **L. 89:** Entire article R&RE, p. 1470, § 1, effective April 23. **L. 2002:** Entire section amended, p. 1032, § 66, effective June 1.

ANNOTATION

Law reviews. For comment on *Young Life Campaign v. Chaffee County* appearing below, see 29 Rocky Mt. L. Rev. 143 (1956).

Annotator's note. The cases annotated under this section were decided under § 39-3-101 (1)(g) as it existed prior to the 1989 repeal and reenactment of this article.

For when home for aged deemed charitable, see *Stanbro v. Baptist Home Ass'n of Colo.* for Aged, 172 Colo. 572, 475 P.2d 23 (1970).

Charity, in legal sense, defined as gift. A charity, in the legal sense may be more fully defined as a gift to be applied consistently with existing laws for the benefit of an indefinite number of persons by erecting or maintaining public buildings or works or otherwise lessening the burdens of government. *Bd. of County Comm'rs v. Denver & R. G. R. R. Employees' Relief Ass'n*, 70 Colo. 592, 203 P. 850 (1922); *Am. Water Works Ass'n v. Bd. of Assmt. Appeals*, 38 Colo. App. 341, 563 P.2d 359 (1976).

Charitable exemptions to be liberally construed. While charitable purpose as an end will be strictly construed as long as the end is clearly established as charitable, the means used to achieve that end will be liberally construed as a use for a charitable purpose. *West Brandt Found., Inc. v. Carper*, 652 P.2d 564 (Colo. 1982).

Statutory provisions exempting from taxation properties used for charitable purposes are liberally construed. *Horton v. Colo. Springs Masonic Bldg. Soc'y*, 64 Colo. 529, 173 P. 61 (1918).

There is no requirement in this section that the property be owned and used by the same entity. *Maurer v. Denver Urban Economic Dev.*, 781 P.2d 111 (Colo. App. 1989).

Tax exemptions must arise directly from constitutional authorization; and, until such authorization is granted, the legislative branch of the government is impotent. *Young Life Campaign v. Chaffee County*, 134 Colo. 15, 300 P.2d 535 (1956).

There are no implied tax exemptions. *Young Life Campaign v. Chaffee County*, 134 Colo. 15, 300 P.2d 535 (1956).

Exemptions from taxation are to be strictly construed and cannot be enlarged by construction. *Murray v. Bd. of County Comm'rs*, 28 Colo. 427, 65 P. 26 (1901); *San Luis Power & Water Co. v. Trujillo*, 93 Colo. 385, 26 P.2d 537 (1933).

Water treatment facility, built pursuant to a directive issued by the federal environmental protection agency, was not among the types of property specifically exempted from taxation and therefore was not exempt. *ASARCO, Inc. v. Bd. of Comm'rs of Lake County*, 916 P.2d 550 (Colo. App. 1995).

Charitable exemptions to be liberally construed. While charitable purpose as an end will be strictly construed as long as the end is clearly established as charitable, the means used to achieve that end will be liberally construed as a use for a charitable purpose. *West Brandt Found., Inc. v. Carper*, 652 P.2d 564 (Colo. 1982).

39-3-102. Household furnishings - exemption. (1) Household furnishings, including free-standing household appliances, wall-to-wall carpeting, an independently owned residential solar electric generation facility, and security devices and systems that are not used for the production of income at any time shall be exempt from the levy and collection of property tax. If any household furnishings are used for the production of income for any period of time during the taxable year, such household furnishings shall be taxable for the entire taxable year. An independently owned residential solar electric generation facility

shall not be considered to be used for the production of income unless the facility produces income for the owner of the residential real property on which the facility is located. For property tax purposes only, rebates, offsets, credits, and reimbursements specified in section 40-2-124, C.R.S., shall not constitute the production of income. For purposes of this subsection (1), for property tax purposes only, security devices and systems shall include, but shall not be limited to, security doors, security bars, and alarm systems.

(2) For property tax years commencing on and after January 1, 1990, no work of art, as defined in section 39-1-102 (18), which is not subject to annual depreciation and which would otherwise be exempt under this section shall cease to be exempt because it is stored or displayed on premises other than a residence.

Source: L. 89: Entire article R&RE, p. 1470, § 1, effective April 23; entire section amended, p. 1494, § 1, effective June 8. L. 92: (1) amended, p. 2216, § 4, effective June 2. L. 2010: (1) amended, (HB 10-1267), ch. 425, p. 2199, § 2, effective August 11.

Editor's note: This section is similar to former § 39-3-101 (1)(a) as it existed prior to 1989.

39-3-103. Personal effects - exemption. Personal effects which are not used for the production of income at any time shall be exempt from the levy and collection of property tax.

Source: L. 89: Entire article R&RE, p. 1471, § 1, effective April 23.

Editor's note: This section is similar to former § 39-3-101 (1)(b) as it existed prior to 1989.

39-3-104. Ditches, canals, and flumes - exemption. Ditches, canals, and flumes which are owned and used by any person exclusively for irrigating land owned by such person shall be exempt from the levy and collection of property tax.

Source: L. 89: Entire article R&RE, p. 1471, § 1, effective April 23.

Editor's note: This section is similar to former § 39-3-101 (1)(c) as it existed prior to 1989.

ANNOTATION

Annotator's note. Since § 39-3-104 is similar to § 39-3-101 (1)(c) as it existed prior to the 1989 repeal and reenactment of this article, relevant cases construing that provision have been included in the annotations to this section.

Irrigation ditch system not taxable separately from land irrigated. A ditch conveying water to a reservoir, whence it is distributed solely for the irrigation of the lands of those entitled to the ditch, is not subject to taxation, separate from the land irrigated: neither is the reservoir nor the bed thereof. *Shaw v. Bond*, 64 Colo. 366, 171 P. 1142 (1918).

Unless rights retained in ditch by third party. Where a ditch company retains an interest in the ditch with water rights unsold, the ditch is not exempt from taxation. *Murray v. Bd. of Comm'rs*, 28 Colo. 427, 65 P. 26 (1901).

Water rights deemed improvement to the lands benefitted. Water rights, although represented by stock in a mutual ditch company, are properly classified as an improvement to the land benefitted by the availability of irrigation for purposes of valuation of the real estate for taxes. *Beatty v. Bd. of County Comm'rs*, 101 Colo. 346, 73 P.2d 982 (1937).

39-3-105. Public libraries - governments - school districts - exemption. Property, real and personal, of public libraries and of the state and its political subdivisions, including school districts or any cooperative association thereof, shall be exempt from the levy and collection of property tax.

Source: L. 89: Entire article R&RE, p. 1471, § 1, effective April 23.

Editor's note: This section is similar to former § 39-3-101 (1)(d) as it existed prior to 1989.

ANNOTATION

Property of the fire and police pension association not exempt from taxation under this section. The fire and police pension association (FPPA) is not a political subdivision as defined in § 39-1-102 (12) and the general assembly has

not specifically exempted the FPPA's property from taxation as property of the state. *City and County of Denver v. Bd. of Assessment Appeals*, 30 P.3d 177 (Colo. 2001).

39-3-106. Property - religious purposes - exemption - legislative declaration.

(1) Property, real and personal, which is owned and used solely and exclusively for religious purposes and not for private gain or corporate profit shall be exempt from the levy and collection of property tax.

(2) In order to guide members of the public and public officials alike in the making of their day-to-day decisions, to provide for a consistent application of the laws, and to assist in the avoidance of litigation, the general assembly hereby finds and declares that religious worship has different meanings to different religious organizations; that the constitutional guarantees regarding establishment of religion and the free exercise of religion prevent public officials from inquiring as to whether particular activities of religious organizations constitute religious worship; that many activities of religious organizations are in the furtherance of the religious purposes of such organizations; that such religious activities are an integral part of the religious worship of religious organizations; and that activities of religious organizations which are in furtherance of their religious purposes constitute religious worship for purposes of section 5 of article X of the Colorado constitution. This legislative finding and declaration shall be entitled to great weight in any and every court.

(3) For the purpose of claiming an exemption pursuant to this section, property that is owned and used by a charitable trust that is exempt from taxation under section 501 (c) (3) of the federal "Internal Revenue Code of 1986", as amended, shall be treated the same as property that is owned and used by any other type of nonprofit organization.

Source: L. 89: Entire article R&RE, p. 1471, § 1, effective April 23; entire section R&RE, p. 1485, § 1, effective June 7. L. 2004: (3) added, p. 506, § 3, effective August 4.

Editor's note: This section is similar to former § 39-3-101 (1)(e) as it existed prior to 1989.

Cross references: For the constitutional provision regarding exemptions for property used for religious worship, schools, or charitable purposes, see § 5 of article X of the state constitution.

ANNOTATION

Annotator's note. Since § 39-3-106 is similar to § 39-3-101 (1)(e) as it existed prior to the 1989 repeal and reenactment of this article, relevant cases construing that provision have been included in the annotations to this section.

Exemption not perpetual. The exemption provided by article X, § 5 of the state constitution is not perpetual and does not run with the land but is dependent upon the use to which the property is put. *St. Mark Coptic Orthodox Church v. State Bd. of Assessment Appeals*, 762 P.2d 775 (Colo. App. 1988).

Distinction must be made between charitable and religious exemptions. A religious group does not have as a fundamental purpose the providing of services which the state would otherwise have to provide since the state is constitutionally prohibited from such religious involvement. *General Conference of Church of God—7th Day v. Carper*, 192 Colo. 178, 557 P.2d 832 (1976).

Constitutionality of tax exemptions for religious organizations. Tax exemptions for religious organizations, in and of themselves, do not violate the establishment clause of the federal constitution. *General Conference of Church of God—7th Day v. Carper*, 192 Colo. 178, 557 P.2d 832 (1976).

But tax incentives that inure only to the benefit of religious organizations solely by virtue of their religious nature do violate the establishment clause. *Catholic Health Initiatives Colo. v. City of Pueblo*, 207 P.3d 812 (Colo. 2009).

One seeking an exemption must comply with the statutory prerequisites for qualification. *St. Mark Coptic Orthodox Church v. State Bd. of Assessment Appeals*, 762 P.2d 775 (Colo. App. 1988).

The test for determining whether the exemption for property used for religious worship applies depends upon the character of

the use to which the property is put. St. Mark Coptic Orthodox Church v. State Bd. of Assessment Appeals, 762 P.2d 775 (Colo. App. 1988); Maurer v. Young Life, 779 P.2d 1317 (Colo. 1989); Pilgrim Rest Baptist Church, Inc. v. Property Tax Adm'r, 971 P.2d 270 (Colo. App. 1998).

Property tax exemptions based on religious use should not be narrowly construed, and each claim for tax exemption must be resolved on the basis of its own facts under the applicable legal standards. Maurer v. Young Life, 779 P.2d 1317 (Colo. 1989); Bd. of Assessment Appeals v. AM/FM Int'l, 940 P.2d 338 (Colo. 1997); Pilgrim Rest Baptist Church, Inc. v. Property Tax Adm'r, 971 P.2d 270 (Colo. App. 1998).

Implicit within the property tax scheme is a requirement that in order for the property to qualify for tax exemption for that tax year, there must be at least some actual use of the property for tax exempt purposes in that tax year. Pilgrim Rest Baptist Church, Inc. v. Property Tax Adm'r, 971 P.2d 270 (Colo. App. 1998).

Court declines to hold, as a matter of law, that any particular frequency or quantity of use religious in character is required to satisfy the constitutional and statutory standards for an exemption based on religious use. Pilgrim Rest Baptist Church, Inc. v. Property Tax Adm'r, 971 P.2d 270 (Colo. App. 1998).

Church failed to sustain its burden of establishing its right to a tax exemption for maintenance building and property on which it was located. First Christian Church v. Bd. of Assmt. Appeals, 711 P.2d 721 (Colo. App. 1985).

Although board must examine the use to which property is put and not the character of the owner, board permissibly considered the character of the property owner in concluding that properties were used for religious worship and reflection. Maurer v. Young Life, 779 P.2d 1317 (Colo. 1989).

Board is permitted and properly concluded that any nonreligious aspects of the activities conducted on properties were incidental to the religious worship and reflection purposes for which the owner claimed such properties were used. Maurer v. Young Life, 779 P.2d 1317 (Colo. 1989).

Thus, social benefit analysis inapplicable to religious groups. While a social benefit analysis may have validity in the determination of charitable exemptions, it has no place in the state's evaluation of its treatment of bona fide religious groups. General Conference of Church of God—7th Day v. Carper, 192 Colo. 178, 557 P.2d 832 (1976).

For broad interpretation of charitable and religious tax exemptions, see General Conference of Church of God—7th Day v. Carper, 192 Colo. 178, 557 P.2d 832 (1976).

Religious group entitled to presumption of use consistent with exemption. Where a church organization has no objectives other than religious, charitable, and educational, it is entitled to the benefit of the presumption that when its building is completed, it will be used exclusively for religious purposes. McGlone v. First Baptist Church, 97 Colo. 427, 50 P.2d 547 (1935).

39-3-106.5. Tax-exempt property - incidental use - exemption - limitations. (1) If any property, real or personal, which is otherwise exempt from the levy and collection of property tax pursuant to the provisions of section 39-3-106, is used for any purpose other than the purposes specified in sections 39-3-106 to 39-3-113, such property shall be exempt from the levy and collection of property tax if:

(a) The property is used for such purposes for less than two hundred eight hours, adjusted for partial usage if necessary on the basis of the relationship that the amount of time and space used for such other purpose bears to the total available time and space, during the calendar year; or

(b) The use of the property for such purposes results in either:

(I) Less than ten thousand dollars of gross income to the owner of such property which is derived from any unrelated trade or business, as determined pursuant to the provisions of sections 511 to 513 of the federal "Internal Revenue Code of 1986", as amended; or

(II) Less than ten thousand dollars of gross rental income to the owner of such property.

(1.5) Notwithstanding the provisions of subsection (1) of this section, for property tax years commencing on or after January 1, 1994, if any property, real or personal, which is otherwise exempt from the levy and collection of property tax pursuant to the provisions of section 39-3-106, is used for any purpose other than the purposes specified in sections 39-3-106 to 39-3-113, such property shall be exempt from the levy and collection of property tax if:

(a) The property is used for such purposes for less than two hundred eight hours, adjusted for partial usage if necessary on the basis of the relationship that the amount of time and space used for such other purpose bears to the total available time and space, during the calendar year; or

(b) The use of the property for such purposes results in:

(I) Less than ten thousand dollars of gross income to the owner of such property which is derived from any unrelated trade or business, as determined pursuant to the provisions of sections 511 to 513 of the federal "Internal Revenue Code of 1986", as amended; and

(II) Less than ten thousand dollars of gross rental income to the owner of such property.

(2) Except as otherwise provided in section 39-3-108 (3) and subsection (3) of this section, if any property, real or personal, that is otherwise exempt from the levy and collection of property tax pursuant to the provisions of sections 39-3-107 to 39-3-113 is used on an occasional, noncontinuous basis for any purpose other than the purposes specified in sections 39-3-106 to 39-3-113, such property shall be exempt from the levy and collection of property tax if:

(a) The property is used for such purposes for less than two hundred eight hours, adjusted for partial usage if necessary on the basis of the relationship that the amount of time and space used for such other purpose bears to the total available time and space, during the calendar year; or

(b) The use of the property for such purposes results in less than twenty-five thousand dollars of gross rental income to the owner of such property.

(3) The requirement that property be used on an occasional basis in order to qualify for the exemption set forth in subsection (2) of this section shall not apply to property, real or personal, that is otherwise exempt from the levy and collection of property tax pursuant to the provisions of section 39-3-111 that is used for any purpose other than the purposes specified in sections 39-3-106 to 39-3-113.

Source: **L. 89:** Entire section added, p. 1486, § 2, effective June 7. **L. 91:** (2) added, p. 1956, § 2, effective June 7. **L. 93:** (1.5) added, p. 613, § 1, effective April 30. **L. 2004:** (2)(b) amended, p. 359, § 1, effective August 4. **L. 2011:** IP(2) amended and (3) added, (HB 11-1010), ch. 275, p. 1240, § 2, effective August 10.

39-3-107. Property - not-for-profit schools - exemption. Property, real and personal, which is owned and used solely and exclusively for schools which are not held or conducted for private or corporate profit shall be exempt from the levy and collection of property tax. No requirement shall be imposed that use of property which is otherwise exempt pursuant to the provisions of this section shall benefit the people of Colorado in order to qualify for said exemption. Any exemption claimed pursuant to the provisions of this section shall comply with the provisions of section 39-2-117.

Source: **L. 89:** Entire article R&RE, p. 1471, § 1, effective April 23. **L. 90:** Entire section amended, p. 1711, § 1, effective June 9.

Editor's note: This section is similar to former § 39-3-101 (1)(f) as it existed prior to 1989.

ANNOTATION

Annotator's note. Since § 39-3-107 is similar to § 39-3-101 (1)(f) as it existed prior to the 1989 repeal and reenactment of this article, relevant cases construing that provision have been included in the annotations to this section.

Validity of section upheld. The validity of this section exempting from taxation educational and charitable institutions is upheld on the ground that if they were not in existence their work would have to be carried on at the expense of the taxpayers. *Kemp v. Pillar of Fire*, 94 Colo. 41, 27 P.2d 1036 (1933); *United Presbyterian Ass'n v. Bd. of County Comm'rs*, 167 Colo. 485, 448 P.2d 967 (1968).

Educational and charitable exemptions upheld on grounds of benefit to citizens. An institution or nonprofit organization, either domestic or foreign, is entitled to the constitutional and statutory tax exemption if its property in this state is used solely and exclusively for schools or for strictly charitable purposes, thus relieving Colorado taxpayers of the burden and expense of providing such advantages to its citizens. *Young Life Campaign v. Bd. of County Comm'rs*, 134 Colo. 15, 300 P.2d 535 (1956).

Determination of exemption based on all proper and appropriate uses. Because the fundamental object of this section is to exempt

school property used for educational purposes, the uses permissible must necessarily embrace all which are proper and appropriate to effect the objects of the institution claiming the benefits of the exemption. *Bishop & Chapter of Cathedral of St. John the Evangelist v. Treasurer of Arapahoe County*, 29 Colo. 143, 68 P. 272 (1901); *Horton v. Fountain Valley Sch.*, 98 Colo. 480, 56 P.2d 933 (1936).

Use incident to main purpose insufficient to alter exempt status. A use incident to the main purpose for which the property is held is not enough to lose tax exemption. Occupation of part of school premises by a bishop and his

family does not render the property subject to taxation so long as his dominant purpose in residing therein is to carry out the educational objects of the institution. *Bishop & Chapter of Cathedral of St. John the Evangelist v. Treasurer of Arapahoe County*, 29 Colo. 143, 68 P. 272 (1901).

Exemption unaffected by receipt of part tuition. The fact that some money is received from a few students as part payment for their tuition, board, and lodging does not, in the circumstances, deprive the property of its exempt character. *Kemp v. Pillar of Fire*, 94 Colo. 41, 27 P.2d 1036 (1933).

39-3-108. Property - nonresidential - health care facility - water company - charitable purposes - exemption - limitations. (1) Property, real and personal, which is owned and used solely and exclusively for strictly charitable purposes and not for private gain or corporate profit shall be exempt from the levy and collection of property tax if:

- (a) Such property is nonresidential;
- (b) Such property is licensed by the state of Colorado as a health care facility; or
- (c) Such property is used as an integral part of a nonprofit domestic water company.

(1.3) Nonresidential property that is owned and used solely and exclusively by a qualified amateur sports organization shall be presumed to be owned and used solely and exclusively for strictly charitable purposes. For purposes of this subsection (1.3), the term "qualified amateur sports organization" means any organization organized and operated exclusively to foster local, statewide, national, or international amateur sports competition if such organization is also organized and operated primarily to support and develop amateur athletes for national or international competition in sports; except that no part of the net earnings of such organization inure to the benefit of any private shareholder or individual. So long as a qualified amateur sports organization demonstrates that its membership is open to any individual who is an amateur athlete, coach, trainer, manager, administrator, or official active in such sport or to any amateur sports organization that conducts programs in such sport, or both, the organization shall be presumed to provide public benefits to an indefinite number of persons and to directly benefit the people of Colorado whether or not the right to benefit may depend upon voluntary membership in the organization.

(1.5) No requirement shall be imposed that use of property which is otherwise exempt pursuant to the provisions of this section shall benefit the people of Colorado in order to qualify for said exemption.

(2) Any exemption claimed pursuant to the provisions of subsection (1) of this section shall comply with the provisions of section 39-2-117.

(3) (a) When any property of a health care facility, real or personal, or any portion thereof, which is otherwise exempt from the levy and collection of property tax pursuant to the provisions of paragraph (b) of subsection (1) of this section, is used for any purpose other than the purposes specified in sections 39-3-106 to 39-3-113, such property or portion thereof shall be exempt from the levy and collection of property tax if the use of the property or portion thereof does not result in gross income derived from any unrelated trade or business to the owner which is in excess of fifteen percent of the total gross revenues derived from the operation of the property. Gross income derived from any unrelated trade or business shall be determined pursuant to the provisions of sections 511 through 513 of the federal "Internal Revenue Code of 1986", as amended.

(b) If the use of any property or portion thereof results in gross income derived from any unrelated trade or business in excess of fifteen percent of the total gross revenues to the owner derived from the operation of the property, the administrator shall determine the value of the nonexempt portion of the property for property tax purposes.

Source: L. 89: Entire article R&RE, p. 1471, § 1, effective April 23. L. 90: (1.3), (1.5), and (3) added, pp. 1711, 1702, §§ 2, 35, effective June 9.

Editor's note: This section is similar to former § 39-3-101 (1)(g) as it existed prior to 1989.

ANNOTATION

Annotator's note. Since § 39-3-108 is similar to § 39-3-101 (1)(g) as it existed prior to the 1989 repeal and reenactment of this article, relevant cases construing that provision have been included in the annotations to this section.

One justification for exempting charitable enterprises from taxation is that they perform functions which tax-supported governmental entities would otherwise be required to perform. *West Brandt Found., Inc. v. Carper*, 652 P.2d 564 (Colo. 1982); *Bd. of Assessment Appeals v. AM/FM Int'l*, 940 P.2d 338 (Colo. 1997).

Neither art. X, sec. 5 of the state constitution nor this section defines "strictly charitable purposes". Therefore it is for the judiciary to construe their meaning on a case by case basis. *Bd. of Assessment Appeals v. AM/FM Int'l*, 940 P.2d 338 (Colo. 1997).

Court will not reverse a decision of board of assessment appeals supported by the record finding that an applicant's activities did not lessen a burden on government and that the applicant operates on a quid pro quo basis. *Bd. of Assessment Appeals v. AM/FM Int'l*, 940 P.2d 338 (Colo. 1997).

Claimant has burden of proof to establish that activity has a charitable purpose and is used solely for such purpose. *Inst. For Research v. Bd. of Assessment Appeals*, 748 P.2d 1346 (Colo. App. 1987).

Right to property tax exemption for charitable use has not been established until it is shown that property is nonresidential. *Anderson Ranch Arts Found. v. Prop. Tax Adm'r*, 729 P.2d 992 (Colo. 1986).

Nonresidential use not found and therefore charitable exemption not applicable. *Anderson Ranch Arts Found. v. Prop. Tax Adm'r*, 729 P.2d 992 (Colo. 1986).

The 15 percent provision found in subsection (3)(a) does not apply unless the property first qualifies as tax-exempt property under subsection (1)(b). Thus portions of offices that were neither part of a licensed health care facility nor owned by an entity that is a licensed health care facility were not exempt from property taxation. *Jefferson County Bd. of County Comm'rs v. Prop. Tax Adm'r*, 989 P.2d 227 (Colo. App. 1999).

Exempt status unaffected by receipt of money from beneficiaries. The fact that fees are charged for use of facilities is not fatal to a claim for exemption. *West Brandt Found., Inc. v. Carper*, 652 P.2d 564 (Colo. 1982).

The national junior college athletic association met all the statutory criteria to constitute a "qualified amateur sports organization" under the provisions of subsection (1.3). *Nat'l Jr. Coll. Athletic v. Huddleston*, 939 P.2d 509 (Colo. App. 1997).

Gun club did not qualify for a tax exemption pursuant to subsection (1.3), because it did not meet the threshold requirement that it be "organized exclusively" to foster amateur sports competition. *Cherry Creek Gun Club, Inc. v. Huddleston*, 119 P.3d 592 (Colo. App. 2005).

Evidence insufficient to support claim for exemption. *West Brandt Found., Inc. v. Carper*, 652 P.2d 564 (Colo. 1982).

39-3-108.5. Property - community corrections facility - exemption. (1) Property, real and personal, which is owned and used solely and exclusively for strictly charitable purposes and not for private gain or corporate profit shall be exempt from the levy and collection of property tax if such property is owned and used by a nonprofit community corrections agency for a community correctional facility or program.

(2) As used in this section:

(a) "Community correctional facility or program" shall have the meaning set forth in section 17-27-102 (3), C.R.S., for community' corrections program.

(b) "Nonprofit community corrections agency" means any person, agency, corporation, association, or entity that:

(I) Is exempt from federal income tax pursuant to the "Internal Revenue Code of 1986", as amended; and

(II) Operates a community correctional facility or program.

(3) The provisions of this section shall apply to property tax years beginning on or after January 1, 1993.

Source: L. 93: Entire section added, p. 614, § 2, effective April 30. L. 95: (2)(a) amended, p. 1108, § 54, effective May 31.

39-3-109. Residential property - integral part of tax-exempt entities - charitable purposes - exemption - limitations. (1) Property, real and personal, which is owned and used solely and exclusively for strictly charitable purposes and not for private gain or corporate profit shall be exempt from the levy and collection of property tax if such property is residential and the structure and the land upon which such structure is located are used as an integral part of a church, an eleemosynary hospital, an eleemosynary licensed health care facility, a school, or an institution whose property is otherwise exempt from taxation pursuant to the provisions of this part 1 and which is not leased or rented at any time to persons other than:

(a) Persons who are attending such school as students; or
(b) Persons who are actually receiving care or treatment from such hospital, licensed health care facility, or institution for physical or mental disabilities and who, in order to receive such care or treatment, are required to be domiciled within such hospital, licensed health care facility, or institution, or within affiliated residential units.

(2) Persons residing within residential units specified in paragraph (b) of subsection (1) of this section may submit to the administrator, on a form prescribed by the administrator, a certificate signed by a physician licensed to practice in the state of Colorado that the medical condition of such individual requires the individual to reside in such residential unit. If a person residing within such residential unit submits such signed certificate to the administrator pursuant to the provisions of this subsection (2), the portion of such residential property that is utilized by qualified occupants shall be deemed to be property used solely and exclusively for strictly charitable purposes and not for private gain or corporate profit and such portion, but only such portion, shall be exempt under the provisions of subsection (1) of this section. The determination as to what portion of such structure is so utilized shall be made by the administrator on the basis of the facts existing on the annual assessment date for such property, and the administrator shall have the authority to determine a ratio which reflects the value of the nonexempt portion of such structure in relation to the total value of the whole structure and the land upon which such structure is located and which is identical to the ratio of the number of residential units occupied by nonqualified occupants to the total number of occupied residential units in such structure.

(2.5) No requirement shall be imposed that use of property which is otherwise exempt pursuant to the provisions of this section shall benefit the people of Colorado in order to qualify for said exemption.

(3) Any exemption claimed pursuant to the provisions of this section shall comply with the provisions of section 39-2-117.

Source: L. 89: Entire article R&RE, p. 1472, § 1, effective April 23. L. 90: (2.5) added, p. 1712, § 3, effective June 9. L. 2002: IP(1) amended, p. 1032, § 67, effective June 1.

Editor's note: This section is similar to former § 39-3-101 (1)(g) as it existed prior to 1989.

39-3-110. Property - integral part of child care center - charitable purposes - exemption - limitations. (1) Property, real and personal, which is owned and used solely and exclusively for strictly charitable purposes and not for private gain or corporate profit shall be exempt from the levy and collection of property tax if such property is used as an integral part of a child care center:

(a) Which is licensed pursuant to article 6 of title 26, C.R.S.;
(b) Which is maintained for the whole or part of a day for the care of five or more children who are not sixteen years of age or older;
(c) Which is not owned or operated for private gain or corporate profit;
(d) The costs of operation of which, including salaries, are reasonable based upon the services and facilities provided and as compared with the costs of operation of any comparable public institution;
(e) Which provides its services to an indefinite number of persons free of charge or at reduced rates equal to five percent of the gross revenues of such child care center or equal

to ten percent of the amount of tuition charged by such child care center to the financially needy or charges on the basis of ability to pay;

(f) The operation of which does not materially enhance, directly or indirectly, the private gain of any individual except as reasonable compensation for services rendered or goods furnished;

(g) The property of which is claimed for exemption does not exceed the amount of property reasonably necessary for the accomplishment of the exempt purpose; and

(h) The property of which is irrevocably dedicated to a charitable purpose.

(1.5) No requirement shall be imposed that use of property which is otherwise exempt pursuant to the provisions of this section shall benefit the people of Colorado in order to qualify for said exemption.

(2) Any exemption claimed pursuant to the provisions of subsection (1) of this section shall comply with the provisions of section 39-2-117.

(3) The provisions of subsection (1) of this section shall not apply to any child care center which is operated for religious purposes and which is exempt from the levy and collection of property tax pursuant to the provisions of section 39-3-106 or 39-3-106.5.

Source: L. 89: Entire article R&RE, p. 1473, § 1, effective April 23; (1)(e) amended and (3) added, p. 1492, § 6, effective June 7. L. 90: (1.5) added, p. 1712, § 4, effective June 9.

Editor's note: This section is similar to former § 39-3-101 (1)(g) as it existed prior to 1989.

39-3-111. Property - used by fraternal or veterans' organization - charitable purposes - exemption - limitations. Property, real and personal, which is owned and used solely and exclusively for strictly charitable purposes and not for private gain or corporate profit shall be exempt from the levy and collection of property tax if such property is used by any fraternal organization, as defined in section 12-9-102 (6), C.R.S., notwithstanding the requirement that such organization be in existence for a period of five years, or by any veterans' organization, as defined in section 12-9-102 (21), C.R.S., notwithstanding the requirement that such organization be in existence for a period of five years, and the net income derived from the use of such property is irrevocably dedicated to any of the purposes specified in sections 39-3-106 to 39-3-110, 39-3-112, or 39-3-113 and to the purpose of maintaining and operating such organization. As used in this section, the term "net income" means all items of revenue and gain minus all items of loss and expense, including amounts reasonably anticipated for future needs, as determined according to the usual method of accounting for such organization. No requirement shall be imposed that use of property which is otherwise exempt pursuant to this section shall benefit the people of Colorado in order to qualify for said exemption. Any exemption claimed pursuant to the provisions of this section shall comply with the provisions of section 39-2-117.

Source: L. 89: Entire article R&RE, p. 1473, § 1, effective April 23. L. 90: Entire section amended, p. 1712, § 5, effective June 9.

Editor's note: This section is similar to former § 39-3-101 (1)(g) as it existed prior to 1989.

ANNOTATION

Statutory presumption of use for charitable purpose relieves fraternal organization only of its burden to establish such use; however, once the finding of charitable purpose is made, such organization has the burden of showing the

irrevocable dedication of the net income of such property to the enumerated statutory uses and purpose set out in this section. *Western Slavonic Ass'n v. Prop. Tax Adm'r*, 835 P.2d 621 (Colo. App. 1992).

39-3-111.5. Property - health care services - charitable purposes - exemption - limitations. (1) Property, real and personal, which is owned and used solely and exclusively for strictly charitable purposes and not for private gain or corporate profit shall be exempt from the levy and collection of property tax if:

(a) Such property is owned by a nonprofit corporation, whether organized under the laws of this state or of another state;

(b) Such property is occupied or used by one or more physician or dentist, or both, licensed to practice medicine or dentistry, as applicable, under the laws of this state for the purpose of the practice of medicine or dentistry;

(c) Such health care services are provided to patients who request such services and the financially needy are only charged for such services based upon the ability to pay; and

(d) The board of county commissioners of the county in which such property is located certifies that a need exists for the provision of such health care services.

(2) The limitations set forth in section 39-3-116 (1) and (2) shall not apply to the use of property pursuant to the provisions of subsection (1) of this section.

(3) Any exemption claimed pursuant to the provisions of this section shall comply with the provisions of section 39-2-117.

Source: L. 91: Entire section added, p. 1956, § 3, effective June 7.

ANNOTATION

Annotator's note. Since § 39-3-111.5 is similar to § 39-3-101 (1)(g)(I)(D) as it existed prior to the 1989 repeal and reenactment of this article, relevant cases construing that provision have been included in the annotations to this section.

Exempt status unaffected by receipt of money from beneficiaries. An institution does not lose its charitable character if it receives revenue from recipients of its bounty sufficient to keep it in operation and further its charitable purposes. *Bishop & Chapter of St. John the Evangelist v. Treasurer of City & County of Denver*, 37 Colo. 378, 86 P. 1021 (1906); *Horton v. Colo. Springs Masonic Bldg. Soc'y*, 64 Colo.

529, 173 P. 61 (1918); *Bd. of County Comm'rs v. San Luis Valley Masonic Ass'n*, 80 Colo. 183, 250 P. 147 (1926); *Am. Water Works Ass'n v. Bd. of Assmt. Appeals*, 38 Colo. App. 341, 563 P.2d 359 (1976).

Where patients asked to pay for actual necessities furnished by home for consumptives, according to their circumstances and the accommodations they receive, and where such compensation does not exceed what is required for maintenance of the institution, it does not render it less a charity. *Bishop & Chapter of Cathedral of St. John the Evangelist v. Treasurer of City & County of Denver*, 37 Colo. 378, 86 P. 1021 (1906).

39-3-112. Definitions - residential property - orphanage - low-income elderly or disabled - homeless or abused - low-income households - charitable purposes - exemption - limitations. (1) As used in this section, unless the context otherwise requires:

(a) "Area median income" means the median income of the county in which the property is located in relation to family size, as published annually by the United States department of housing and urban development.

(a.3) "Disabled" means that an individual is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or that has lasted for a continuous period of not less than twelve months.

(a.5) "Elderly or disabled low-income residential facility" means a facility, a portion of which is operated as a residential facility for elderly or disabled persons who meet the requirements of sub-subparagraph (A) of subparagraph (II) of paragraph (a) of subsection (3) of this section, which portion houses only such persons, exclusive of necessary housing facilities for resident managerial personnel, and the rest of which is operated as a health care facility which is licensed by the state of Colorado.

(b) "Family service facility" means a facility which is operated as a residential facility for single-parent families, which houses only such families, exclusive of necessary housing facilities for resident managerial personnel, which provides, in addition to housing, coun-

selling in such areas as career development, parenting skills, and financial budgeting, and which is a child care center licensed pursuant to the provisions of section 26-6-104, C.R.S.

(b.3) "Low-income household" means an individual or family whose total income is no greater than thirty percent of the area median income.

(b.5) "Low-income household residential facility" means a facility:

(I) That is operated as a residential facility for low-income households;

(II) For which the published rent schedule includes rents that a low-income household can afford by expending no more than thirty percent of the low-income household's total income for rent and utilities; and

(III) For which the owner of the facility has shown that the rent for the facility for which the exemption authorized in subsection (2) of this section applies is lower than the rent for a comparable facility for which said exemption does not apply by an amount equal to at least the value of said exemption.

(c) "Transitional housing facility" means a facility that:

(I) Is operated as a residential facility for single individuals or families, or both, who are homeless, who have resided within the past six months in a shelter for the homeless, or who have been abused, and whose incomes are as specified in sub-subparagraph (A) of subparagraph (II) of paragraph (a) of subsection (3) of this section;

(II) Has as its purpose to facilitate the achievement of independent living by such individuals and families within a twenty-four-month period; and

(III) Provides counseling in such areas as career development, parenting skills, and financial budgeting, whether at such facility or at another location.

(2) Property, real and personal, which is owned and used solely and exclusively for strictly charitable purposes and not for private gain or corporate profit shall be exempt from the levy and collection of property tax if such property is residential and is occupied, owned, and operated in accordance with the requirements set forth in subsection (3) of this section.

(3) In order for property to be exempt from the levy and collection of property tax pursuant to the provisions of subsection (2) of this section, the administrator shall be required to find, pursuant to the provisions of section 39-2-117, that:

(a) The residential structure is:

(I) Occupied as an orphanage; or

(II) Occupied by:

(A) Single individuals who are sixty-two years of age or older or who are disabled, or a family, the head of which, or whose spouse, is sixty-two years of age or older or is disabled, and whose incomes are within one hundred fifty percent of the limits prescribed for similar individuals or families who occupy low-rent public housing operated by a city or county housing authority which is nearest in distance to such structure; or

(B) Single-parent families whose incomes are as specified in sub-subparagraph (A) of this subparagraph (II) and who occupy a family service facility which is owned and operated by an organization which is exempt from federal income tax pursuant to the provisions of section 501 (c) (3) of the "Internal Revenue Code of 1986", as amended; or

(C) Single individuals or families who occupy a transitional housing facility which is owned and operated by an organization which is exempt from federal income tax pursuant to the provisions of section 501 (c) (3) of the "Internal Revenue Code of 1986", as amended; or

(D) Low-income households who occupy a low-income household residential facility.

(b) The residential structure is efficiently operated. Efficient operation is determined by the following factors:

(I) That the costs of operation, including salaries, are reasonable based upon the services and facilities provided and as compared with the costs of operation of any comparable public institution;

(II) That such operations do not materially enhance, directly or indirectly, the private gain of any individual except as reasonable compensation for services rendered or goods furnished;

(III) That the property on which the exemption is claimed does not exceed the amount of property reasonably necessary for the accomplishment of the exempt purpose; and

(IV) That the owners and operators of such residential structure have no occupancy requirement that discriminates upon the basis of race, creed, color, religion, sex, sexual orientation, marital status, national origin, or ancestry; however, if the owner or sponsoring organization is a religious denomination, said owners or operators may give preference to members of that denomination.

(c) The property is owned:

(I) By a nonprofit corporation of which:

(A) No part of the net earnings of such corporation inures to the benefit of any private shareholder; and

(B) Property owned by such corporation is irrevocably dedicated to charitable, religious, or hospital purposes and no portion of its assets will inure to the benefit of any private person upon the liquidation, dissolution, or abandonment of such corporation; or

(II) (A) With respect to residential structures specified in sub-subparagraphs (A), (C), and (D) of subparagraph (II) of paragraph (a) of this subsection (3), during any compliance period, as defined by section 42 (i) (1) of the "Internal Revenue Code of 1986", as amended, by any domestic or foreign limited partnership of which any nonprofit corporation that satisfies the provisions of subparagraph (I) of this paragraph (c) is a general partner and that was formed for the purpose of obtaining, and has been allocated, low-income housing credits pursuant to section 42 of the "Internal Revenue Code of 1986", as amended.

(B) The provisions of this subparagraph (II) shall not apply if, during such compliance period, such domestic or foreign limited partnership which owns the residential structure distributes income or has income available for distribution to its partners or if the residential structure is sold or otherwise disposed of during such compliance period. If the administrator determines that, as specified in this sub-subparagraph (B), income has been distributed or has been available for distribution or the residential property has been sold or otherwise disposed of, the administrator shall revoke the property tax exemption for the residential property and property taxes shall be levied and collected against the residential property, which would have otherwise been levied and collected from the date on which the exemption was initially granted plus all delinquent interest as provided for by law.

(C) The provisions of this subparagraph (II) shall apply to applications for exemption made pursuant to section 39-2-117 which are filed on and after January 1, 1991, or which are pending on said date; or

(III) (A) With respect to residential structures specified in sub-subparagraphs (A), (C), and (D) of subparagraph (II) of paragraph (a) of this subsection (3), by any domestic or foreign limited partnership of which all of the general and limited partners are nonprofit corporations that satisfy the provisions of subparagraph (I) of this paragraph (c).

(B) The provisions of this subparagraph (III) shall apply to applications for exemption made pursuant to section 39-2-117 which are filed on or after January 1, 1993, or which are pending on said date; or

(IV) (A) With respect to elderly or disabled low-income residential facilities or low-income household residential facilities, during any compliance period, as defined by section 42 (i) (1) of the "Internal Revenue Code of 1986", as amended, by any domestic or foreign limited partnership so long as each of the general partners of such limited partnership is a for-profit corporation, seventy-five percent or more of the outstanding voting stock of which is owned by, and seventy-five percent or more of the members of the board of directors of which is elected by, one or more nonprofit corporations that satisfy the provisions of subparagraph (I) of this paragraph (c) and so long as such limited partnership was formed for the purpose of obtaining, and the structure that is owned by such limited partnership has been allocated, low-income housing credits pursuant to section 42 of the "Internal Revenue Code of 1986", as amended.

(B) The provisions of this subparagraph (IV) shall not apply if, during any compliance period: Any of the general partners of the domestic or foreign limited partnership which owns the residential structure specified in sub-subparagraph (A) of this subparagraph (IV) cease to meet the requirements specified in sub-subparagraph (A) of this subparagraph (IV); the domestic or foreign limited partnership which owns such residential structure distributes cash or other property to its partners; or such residential structure is sold or otherwise disposed of.

(C) Upon a determination by the administrator that any of the events specified in sub-subparagraph (B) of this subparagraph (IV) have occurred, the administrator shall revoke the property tax exemption for the residential facility specified in sub-subparagraph (A) of this subparagraph (IV), and property taxes shall be levied and collected against such residential facility in the amount which would have otherwise been levied and collected from the date on which such exemption was initially granted, and all delinquent interest provided by law shall apply to such taxes.

(D) The provisions of this subparagraph (IV) shall apply to applications for exemption made pursuant to section 39-2-117 which are filed on or after January 1, 1993, or which are pending on such date.

(4) In the event the occupants of the residential structure include both persons who are qualified pursuant to paragraph (a) of subsection (3) of this section and persons who are not qualified, the portion of such residential structure that is utilized by qualified occupants shall be deemed to be property used solely and exclusively for strictly charitable purposes and not for private gain or corporate profit, and such portion, but only such portion, shall be exempt pursuant to the provisions of subsection (2) of this section. The determination as to what portion of such structure is so utilized shall be made by the administrator on the basis of the facts existing on the annual assessment date for such property, and the administrator shall have the authority to determine a ratio which reflects the value of the nonexempt portion of such structure in relation to the total value of the whole structure and the land upon which such structure is located and which is identical to the ratio of the number of residential units occupied by nonqualified occupants to the total number of occupied residential units in such structure.

(4.5) No requirement shall be imposed that use of property which is otherwise exempt pursuant to the provisions of this section shall benefit the people of Colorado in order to qualify for said exemption.

(5) Any exemption claimed pursuant to the provisions of this section shall comply with the provisions of section 39-2-117.

(6) For purposes of processing applications received for the exemption authorized by subsection (2) of this section for low-income household residential facilities, the department of local affairs shall contract with an independent contractor for the performance of the application processing services in accordance with section 24-50-504, C.R.S. Said contract shall be limited to a term of one year and shall commence when the exemption for low-income household residential facilities first becomes available.

Source: **L. 89:** Entire article R&RE, p. 1473, § 1, effective April 23. **L. 90:** (4.5) added, p. 1713, § 6, effective June 9. **L. 91:** (1)(c) added and (3)(a) and (3)(c) amended, p. 1957, §§ 4, 5, effective June 7. **L. 92:** (3)(c)(II)(B) amended, p. 2223, § 3, effective April 9. **L. 93:** (1)(a.5), (3)(c)(III), and (3)(c)(IV) added and (3)(c)(II)(C) amended, p. 432, §§ 1, 2, effective April 19. **L. 95:** (1)(c), (3)(c)(II)(A), and (3)(c)(III)(A) amended, p. 1391, § 1, effective June 5. **L. 2001:** (1)(a), (3)(c)(II)(A), (3)(c)(III)(A), and (3)(c)(IV)(A) amended and (1)(a.3), (1)(b.3), (1)(b.5), (3)(a)(II)(D), and (6) added, pp. 1520, 1521, §§ 1, 2, 3, effective August 8. **L. 2008:** (3)(b)(IV) amended, p. 1604, § 34, effective May 29.

Editor's note: This section is similar to former § 39-3-101 (1)(g) as it existed prior to 1989.

Cross references: For the legislative declaration contained in the 2008 act amending subsection (3)(b)(IV), see section 1 of chapter 341, Session Laws of Colorado 2008.

ANNOTATION

For when home for aged deemed charitable, see *Stanbro v. Baptist Home Ass'n of Colo. for Aged*, 172 Colo. 572, 475 P.2d 23 (1970) (decided under former § 39-3-101 (1)(g)).

Subsection (4) is inapplicable in determining whether transitional housing facilities

qualify for an exemption if unoccupied on January 1. *Family Tree Found. v. Prop. Tax Adm'r*, 119 P.3d 581 (Colo. App. 2005).

39-3-112.5. Residential property - homeless - charitable purposes - exempt - limitations. (1) Property, real and personal, which is used solely and exclusively for strictly charitable purposes and not for private gain or corporate profit shall be exempt from the levy and collection of property tax if such property is residential, is owned by the United States, and is leased by a department or agency of the United States to any nonprofit organization, whether organized under the laws of this state or of another state, for the purpose of housing single individuals or families, or both, who are homeless.

(2) Any exemption shall be allowed pursuant to subsection (1) of this section only upon the delivery to the administrator of a copy of such lease between the agency of the United States and the nonprofit organization and a copy of the rental agreement between the nonprofit organization and the individuals or families to be housed in such property. Such exemption shall be allowed only for the period of time that such residential property is actually used for said purpose, and such nonprofit organization shall immediately notify the administrator when the use of such residential property has changed.

(3) Any exemption claimed pursuant to the provisions of this section shall comply with the provisions of section 39-2-117.

Source: L. 91: Entire section added, p. 1959, § 6, effective June 7.

39-3-113. Residential property - while being constructed - charitable purposes - exemption - limitations. Property, real and personal, which is owned and used solely and exclusively for strictly charitable purposes and not for private gain or corporate profit shall be exempt from the levy and collection of property tax if such property is residential and consists of land and one or more structures which are in the process of being constructed if such property is irrevocably committed to residential use in accordance with the requirements set forth in section 39-3-109 (1) or 39-3-112 (2) and (3). The exemption provided by this section shall terminate on the assessment date subsequent to the issuance of a permit or other authority to occupy such structure or structures. Thereafter, such property shall be subject to the provisions of sections 39-3-109 and 39-3-112. No requirement shall be imposed that use of property which otherwise is exempt pursuant to the provisions of this section shall benefit people of Colorado in order to qualify for said exemption. Any exemption claimed pursuant to the provisions of this section shall comply with the provisions of section 39-2-117.

Source: L. 89: Entire article R&RE, p. 1475, § 1, effective April 23. **L. 90:** Entire section amended, p. 1713, § 7, effective June 9.

Editor's note: This section is similar to former § 39-3-101 (1)(g) as it existed prior to 1989.

ANNOTATION

Annotator's note. Since § 39-3-113 is similar to § 39-3-101 (1)(g) as it existed prior to the 1989 repeal and reenactment of this article, relevant cases construing that provision have been included in the annotations to this section.

Prospective site of building not exempt. Under this section and § 5 of art. X, Colo. Const., property held with the intention of erecting thereon at some future time buildings for purely charitable purposes is not exempt from taxation. *City & County of Denver v. George Washington Lodge Ass'n*, 121 Colo. 470, 217 P.2d 617 (1950).

Requiring ownership as well as use deemed within constitutional authorization. In requiring ownership, as well as use for strictly charitable purposes, the general assembly acted

within its power, under § 5, art. X, Colo. Const., to vary, by general law, such exemptions created by the constitution. *First Nat'l Bank v. Bd. of County Comm'rs*, 189 Colo. 128, 538 P.2d 427 (1975).

When there is neither a present charitable use nor the vestige of a building in which such use might be carried on, there is no possible basis for exemption. *Grace Calvary Church v. City & County of Denver*, 130 Colo. 290, 274 P.2d 983 (1954).

Where unfinished building deemed within exemption. The fact that a building remains in an unfinished state, due to inability to obtain funds to complete it, does not destroy the property's tax exempt status, because of the uses, wholly consistent with the operation of a hospi-

tal, to which it is being put pending its completion. City & County of Denver v. Spears Free

Clinic Hosp. for Poor Children, 142 Colo. 347, 350 P.2d 1057 (1960).

39-3-113.5. Property acquired by nonprofit housing provider for low-income housing - use for charitable purposes - exemption - limitations - definitions. (1) As used in this section, unless the context otherwise requires:

(a) “Area median income” means the median income of any county in which property is located in relation to family size, as published annually by the United States department of housing and urban development.

(b) “Indicators of intent” means off-site activities of a nonprofit housing provider that establish the provider’s specific intent to use property for the purpose of constructing or rehabilitating housing to be sold to low-income applicants.

(c) “Low-income applicant” means an individual or family whose total income is no greater than sixty percent of the area median income and who applies to a nonprofit housing provider to assist in the construction and purchase of housing to be constructed by the provider.

(d) “Nonprofit housing provider” means an organization that is exempt from federal income tax pursuant to section 501 (c) (3) of the federal “Internal Revenue Code of 1986”, as amended, and that has a primary organizational mission of working with low-income applicants to construct or rehabilitate housing that the organization then sells to the low-income applicants for their residential use.

(2) Subject to the limitations specified in subsection (3) of this section, for property tax years commencing on or after January 1, 2011, real property acquired by a nonprofit housing provider upon which the provider intends to construct or rehabilitate housing to be sold to low-income applicants is deemed to be being used for strictly charitable purposes, regardless of whether or not there is actual physical use of the property, and shall be exempt from property taxation in accordance with section 5 of article X of the state constitution. In determining whether a nonprofit housing provider satisfies the intent requirement of this subsection (2) with respect to particular property, the administrator may consider indicators of intent, including but not limited to:

(a) The establishment by the nonprofit housing provider of a committee or other structure for the purpose of planning the construction or rehabilitation of housing on the property;

(b) Steps taken by the nonprofit housing provider to obtain any required local government approvals for the construction or rehabilitation of housing on the property;

(c) Steps taken by the nonprofit housing provider to develop and implement a financing plan for the construction or rehabilitation of housing on the property;

(d) The hiring of architects, contractors, or other professionals by the nonprofit housing provider in preparation for the actual construction or rehabilitation of housing on the property; and

(e) The solicitation or acceptance by the nonprofit housing provider of applications from low-income applicants for housing to be constructed or rehabilitated on the property.

(3) The property tax exemption allowed to a nonprofit housing provider by subsection (2) of this section is subject to the following limitations:

(a) The exemption may be allowed for a maximum of five consecutive property tax years, beginning with the property tax year in which the nonprofit housing provider obtained title to the property; and

(b) If the nonprofit housing provider is allowed an exemption for any property tax year and subsequently sells, donates, or leases the property to any person other than a low-income applicant who assisted in the construction of housing for the applicant’s residential use on the property, the provider shall be liable for all property taxes that the provider did not previously pay due to the exemption.

Source: L. 2011: Entire section added, (HB 11-1241), ch. 248, p. 1082, § 1, effective August 10.

39-3-114. Burden - claim for charitable exemption. The burden shall be on the owner and operator of any residential property for which an exemption is claimed pursuant to any of the provisions of sections 39-3-109 and 39-3-112 to show facts sufficient to support the exemption claimed. In determining whether or not a particular property is entitled to such an exemption provided for in any of said sections, the administrator may require the owner or operator of such property to annually submit a complete financial report on its operations and may require any occupants whose residential units are claimed to qualify for such exemption to submit copies of their federal or state income tax returns.

Source: L. 89: Entire article R&RE, p. 1475, § 1, effective April 23. L. 2009: Entire section amended, (SB 09-042), ch. 176, p. 781, § 4, effective August 5.

Editor's note: This section is similar to former § 39-3-101 (1)(g) as it existed prior to 1989.

ANNOTATION

Subsection (1)(g) not violative of equal protection. There can be no doubt that the general assembly intended to treat property owned and used by a charity differently than property merely used by a charity. Since within these classes all persons or entities are treated simi-

larly, there is no violation of equal protection under the fourteenth amendment. First Nat'l Bank v. Bd. of County Comm'rs, 189 Colo. 128, 538 P.2d 427 (1975) (decided under former law).

39-3-114.5. Charitable exemption - owner claiming federal tax credit - fee in lieu of school district tax. (1) Whenever an entity organized for the purpose of obtaining tax credits through the new markets tax credit program under 26 U.S.C. sec. 45 D of the federal "Internal Revenue Code of 1986", as amended, or the rehabilitation tax credit program under 26 U.S.C. sec. 47 of the federal "Internal Revenue Code of 1986", as amended, owns an interest in real property for which an exemption is claimed, the entity shall pay annually to the treasurer of the county in which the property is located a payment in lieu of taxes, which payment shall not exceed the amount of taxes that would be due for total program for the school district in which the property is located if the interest were taxable.

(2) Each year during the regular tax assessment period, the board of county commissioners of each county in which a real property interest described in subsection (1) of this section is located shall provide to each entity that holds such real property interest the following information in the same manner as such information is provided to any other owner of real property in the county:

(a) The current assessed value of the real property interest expressed in dollars;
(b) The amount of the payment in lieu of taxes due on the real property interest based on the value and tax rate levied for total program for the school district in which the property is located that would be applicable to the real property interest if it were taxable; and

(c) The date the payment in lieu of taxes is due for such real property interest based on the date property taxes within the county are due.

(3) The treasurer of each county that receives a payment in lieu of taxes pursuant to this section shall pay over to the school district in which the real property interest described in subsection (1) of this section is located the amount of the total payment; except that the treasurer may deduct the costs incurred by the treasurer in administering this subsection (3).

(4) Each school district that receives a payment in lieu of taxes pursuant to this section shall certify the amount paid or received to the state board of education.

Source: L. 2009: Entire section added, (SB 09-042), ch. 176, p. 780, § 3, effective August 5.

39-3-115. Statutes not applicable. Nothing in sections 39-3-106 to 39-3-114 shall apply to parts 2 and 5 of article 4 of title 29, C.R.S.

Source: L. 89: Entire article R&RE, p. 1476, § 1, effective April 23.

39-3-116. Combination use of property - charitable, religious, and educational purposes - exemption - limitations. (1) Except as otherwise provided in this section, property, real and personal, which is owned and used by the owner thereof or by any other person or organization solely and exclusively for any combination of the purposes specified in sections 39-3-106 to 39-3-113, subject to the limitations and requirements in said sections, including but not limited to the requirement that property not be owned or used for private or corporate gain or profit, shall be exempt from the levy and collection of property tax. No requirement shall be imposed that use of property which is otherwise exempt pursuant to any of said sections shall benefit the people of Colorado in order to qualify for said exemption. Property which is otherwise exempt pursuant to the provisions of this section shall be subject to the provisions of section 39-3-129 relating to the proportional valuation of exempt property if such property is partially leased, loaned, or otherwise made available for a portion of any calendar year to any business conducted for profit.

(2) In the event that such property is used by any person or organization other than the owner:

(a) The use of the property by the owner, if any, must qualify pursuant to the provisions of this section or pursuant to any of the provisions of sections 39-3-106 to 39-3-113, and, in addition, the owner must qualify for an exemption pursuant to the provisions of section 39-2-117;

(b) The use of the property by the person or organization other than the owner is a use described in the provisions of this section or in any of the provisions of sections 39-3-106 to 39-3-113 or such person or organization is otherwise exempt from the payment of property taxes; and

(c) The amount received by the owner for the use of such property specified in sections 39-3-107 to 39-3-113, other than from any shareholder or member of the owner or from any person or organization controlled by an organization which also controls such shareholder or member, shall not exceed one dollar per year plus an equitable portion of the reasonable expenses incurred in the operation and maintenance of the property so used. For purposes of this paragraph (c), reasonable expenses shall include interest expenses but shall not include depreciation or any amount expended to reduce debt.

(3) Any exemption claimed pursuant to the provisions of this section shall comply with the provisions of section 39-2-117.

Source: **L. 89:** Entire article R&RE, p. 1476, § 1, effective April 23; (2)(c) amended, p. 1486, § 3, effective June 7. **L. 90:** (1) amended, p. 1713, § 8, effective June 9.

Editor's note: This section is similar to former § 39-3-101 (1)(g.1) as it existed prior to 1989.

ANNOTATION

Annotator's note. Since § 39-3-116 is similar to § 39-3-101 (1)(g.1) as it existed prior to the 1989 repeal and reenactment of this article, relevant cases construing that provision have been included in the annotations to this section.

Rule of strict construction not followed in all cases. While tax exemptions are normally subject to strict construction and limitation, this rule of strict construction is not applied with full vigor to charitable, religious, and educational exemptions. *Bishop & Chapter of Cathedral of St. John the Evangelist v. Treasurer of Arapahoe County*, 29 Colo. 143, 68 P. 272 (1901); *Colo. Sem. v. Bd. of Comm'rs*, 30 Colo. 507, 71 P. 410 (1903); *Bishop & Chapter of Cathedral of St. John the Evangelist v. Treasurer of City and County of Denver*, 37 Colo. 378, 86 P. 1021 (1906); *Pitcher v. Miss Wolcott Sch. Ass'n*, 63 Colo. 294, 165 P. 608 (1917); *Horton v. Colo.*

Springs Masonic Bldg. Soc'y, 64 Colo. 529, 173 P. 61 (1918); *Bd. of Comm'rs v. San Luis Valley Masonic Ass'n*, 80 Colo. 183, 250 P. 147 (1926); *Denver Turnverein v. McGlone*, 91 Colo. 473, 15 P.2d 709 (1932); *Kemp v. Pillar of Fire*, 94 Colo. 41, 27 P.2d 1036 (1933); *General Conference of Church of God—7th Day v. Carper*, 192 Colo. 178, 557 P.2d 832 (1976).

Each case must be resolved on its own facts. While tax exemption statutes are generally strictly construed, each case must be resolved on the basis of its own facts, considering all its facts and circumstances and the intentions and purposes of those in charge of the institution to which the property belongs, respecting the use and occupation of such property. *Bishop & Chapter of Cathedral of St. John the Evangelist v. Treasurer of City & County of Denver*, 37 Colo. 378, 86 P. 1021 (1906); *United Presbyte-*

rian Ass'n v. Bd. of County Comm'rs, 167 Colo. 485, 448 P.2d 967 (1968); Am. Water Works Ass'n v. Bd. of Assmt. Appeals, 38 Colo. App. 341, 563 P.2d 359 (1976).

General assembly has power to abolish tax exemptions granted. It is within the power of

the general assembly to abolish tax exemptions granted to religious, charitable, and educational institutions. *McGlone v. First Baptist Church*, 97 Colo. 427, 50 P.2d 547 (1935).

39-3-117. Cemeteries - not-for-profit - exemption. Cemeteries not used or held for private or corporate profit shall be exempt from the levy and collection of property tax.

Source: L. 89: Entire article R&RE, p. 1476, § 1, effective April 23.

Editor's note: This section is similar to former § 39-3-101 (1)(h) as it existed prior to 1989.

39-3-118. Intangible personal property - exemption. Intangible personal property shall be exempt from the levy and collection of property tax. For purposes of this section, "intangible personal property" shall include, but is not limited to, computer software.

Source: L. 89: Entire article R&RE, p. 1476, § 1, effective April 23. L. 90: Entire section amended, p. 1715, § 2, effective May 2.

Editor's note: This section is similar to former § 39-3-101 (1)(i) as it existed prior to 1989.

Cross references: For the legislative declaration contained in the 1990 act amending this section, see section 1 of chapter 281, Session Laws of Colorado 1990.

ANNOTATION

Intangible personal property exemption does not apply to a public utility. Division of property taxation reasonably interpreted section as applying to cable companies but not a public utility that provided similar service, and this

interpretation did not violate the constitutional guarantees of uniform taxation and equal protection. *Qwest Corp. v. Colo. Div. of Prop. Taxation*, ___ P.3d ___ (Colo. App. 2011).

39-3-118.5. Business personal property - exemption. For property tax years commencing on and after January 1, 1996, business personal property shall be exempt from the levy and collection of property tax until such business personal property is first used in the business after acquisition.

Source: L. 95: Entire section added, p. 1213, § 1, effective May 31.

39-3-119. Inventories - materials and supplies - held for consumption or primarily for sale - exemption. Inventories of merchandise and materials and supplies that are held for consumption by any business or are held primarily for sale shall be exempt from the levy and collection of property tax. The property tax administrator shall publish in the manuals, appraisal procedures, and instructions prepared and published pursuant to section 39-2-109 (1) (e) a definition or description of the types of personal property that are "held for consumption by any business" and therefore exempt from the levy and collection of property tax pursuant to this section.

Source: L. 89: Entire article R&RE, p. 1476, § 1, effective April 23. L. 2000: Entire section amended, p. 750, § 2, effective May 23.

Editor's note: This section is similar to former § 39-3-101 (1)(k) as it existed prior to 1989.

ANNOTATION

Television signal boxes and filters owned by a television service provider and leased to customers are exempt property. The property tax administrator's published guidelines for the consumable personal property tax exemption allow for personal property to be exempt from taxation if the acquisition cost of the property is \$250 or less. Because the value of each box and filter, or each combination of one box and one

filter, was less than \$250 and the boxes and filters were produced by different manufacturers and recorded as separate assets by the television service provider, the boxes and filters are considered individual items worth less than \$250 rather than components of a larger system worth more than \$250. *EchoStar Satellite, L.L.C. v. Arapahoe County Bd. of Equaliz.*, 171 P.3d 633 (Colo. App. 2007).

39-3-119.5. Personal property - exemption - definitions. (1) For property tax years commencing on and after January 1, 1997, personal property not otherwise exempt from property tax shall be exempt from the levy and collection of property tax if the personal property would otherwise be listed on a single personal property schedule and the actual value of such personal property is less than or equal to the amount set forth in subsection (2) of this section.

(2) (a) The exemption created in subsection (1) of this section shall be up to and including the following amounts:

(I) Two thousand five hundred dollars for property tax years commencing prior to January 1, 2009;

(II) Four thousand dollars for property tax years commencing on January 1, 2009, and January 1, 2010;

(III) Five thousand five hundred dollars for property tax years commencing on January 1, 2011, and January 1, 2012; and

(IV) Seven thousand dollars for property tax years commencing on January 1, 2013, and January 1, 2014.

(b) (I) Beginning with the property tax year commencing on January 1, 2015, the amount of the exemption created in subsection (1) of this section shall be adjusted biennially to account for inflation since the amount of the exemption last changed pursuant to this subsection (2). On or before November 1, 2014, and each even-numbered year thereafter, the administrator shall calculate the amount of the exemption for the next two-year cycle using inflation for the prior two calendar years as of the date of the calculation. The adjusted exemption shall be rounded upward to the nearest one hundred dollar increment. The administrator shall certify the amount of the exemption for the next two-year cycle and publish the amount on the web site maintained by the division of property taxation in the department of local affairs.

(II) As used in subparagraph (I) of this paragraph (b), "inflation" means the annual percentage change in the United States department of labor, bureau of labor statistics, consumer price index for Denver-Boulder-Greeley, all items, all urban consumers, or its successor index.

Source: L. 96: Entire section added, p. 1847, § 1, effective August 7. L. 2008: Entire section amended, p. 947, § 1, effective August 5.

ANNOTATION

Under both the plain language and the legislative history of this section, the statutory \$2,500 exemption threshold must be applied on a "per schedule" basis and not on a "per business location" basis. *SecurityLink from Ameritech, Inc. v. City & County of Denver*, 32 P.3d 499 (Colo. App. 2000).

Where personal property situated in multiple locations throughout the county was listed on a single personal property schedule and the total

valuation of all the property listed on the schedule exceeded the \$2,500 exemption threshold, neither the language of the statute nor the legislative history supports the view that the general assembly intended to exempt such property from taxation under these circumstances. *SecurityLink from Ameritech, Inc. v. City & County of Denver*, 32 P.3d 499 (Colo. App. 2000).

The plain language of this section does not

contemplate an exemption where property located at multiple locations was encompassed in a single schedule and the total property value per schedule far exceeded \$2,500. TCI Satellite Entm't, Inc. v. Bd. of Equaliz., 9 P.3d 1179 (Colo. App. 2000), aff'd, 31 P.3d 155 (Colo. 2001).

This section merely exempts a taxpayer's otherwise non-exempt personal property in a particular county if the aggregate value of

such property does not exceed \$2,500. Huddleston v. Bd. of Equaliz., 31 P.3d 155 (Colo. 2001).

This exemption allowed by this section must be applied on a per-schedule basis and this section contemplates that all listings of personal property owned by a single taxpayer in a single county will be treated as a single schedule. Huddleston v. Montezuma County Bd. of Equaliz., 31 P.3d 155 (Colo. 2001).

39-3-120. Livestock - exemption. Livestock shall be exempt from the levy and collection of property tax.

Source: L. 89: Entire article R&RE, p. 1476, § 1, effective April 23.

Editor's note: This section is similar to former § 39-3-101 (1)(l) as it existed prior to 1989.

39-3-121. Agricultural and livestock products - exemption. Agricultural and livestock products shall be exempt from the levy and collection of property tax.

Source: L. 89: Entire article R&RE, p. 1477, § 1, effective April 23.

Editor's note: This section is similar to former § 39-3-101 (1)(m) as it existed prior to 1989.

39-3-122. Agricultural equipment used in production of agricultural products - exemption. Agricultural equipment which is used on any farm or ranch in the production of agricultural products shall be exempt from the levy and collection of property tax.

Source: L. 89: Entire article R&RE, p. 1477, § 1, effective April 23.

Editor's note: This section is similar to former § 39-3-101 (1)(n) as it existed prior to 1989.

39-3-123. Works of art, literary materials, and artifacts - on loan - exemption - limitations - definitions. (1) Works of art, literary materials, and artifacts shall be exempt from the levy and collection of property tax if such works of art, literary materials, and artifacts are loaned to and are in the custody and control of:

- (a) The state or a political subdivision thereof; or
- (b) A library or any art gallery or museum which is owned or operated by a charitable organization whose property is irrevocably dedicated to charitable purposes and whose assets shall not inure to the benefit of any private person upon the liquidation, dissolution, or abandonment by the owner, and which uses such works of art, literary materials, and artifacts for charitable purposes. This exemption shall apply only for the period of time during which such works of art, literary materials, and artifacts are actually on loan and shall be in addition to such exemptions provided for in sections 39-3-108 to 39-3-113.

(2) Any exemption claimed pursuant to the provisions of subsection (1) of this section shall comply with the provisions of section 39-5-113.5.

(3) For purposes of subsection (1) of this section:

(a) "Artifacts" means items of personal property which are objects of human workmanship and which have archaeological or historical significance.

(b) "Charitable organization" means a charitable organization as defined in section 39-26-102 (2.5).

(c) "Charitable purposes" means public display, research, educational study, maintenance of property, and preparation for display.

(d) “Literary materials” means items of personal property including, but not limited to, books, letters, diaries, records, documents, memoranda, journals, magazines, and notes.

(e) “Works of art” means works of art as defined in section 39-1-102 (18).

Source: L. 89: Entire article R&RE, p. 1477, § 1, effective April 23.

Editor’s note: This section is similar to former § 39-3-101 (1)(o) as it existed prior to 1989.

39-3-124. Property used by state entity - installment sales or lease agreement - lease-purchase or leveraged lease agreement - exemption. (1) (a) Property, real and personal, that is used by the state or any of its political subdivisions pursuant to the provisions of any installment sales agreement, lease-purchase agreement, or any other agreement whereby the state or such political subdivision shall be entitled to acquire title to such property at the end of the agreement term without cost or for only nominal consideration shall be exempt from the levy and collection of property tax.

(b) (I) (A) Subject to the provisions of sub-subparagraph (B) of this subparagraph (I), on and after January 1, 2009, the part of real property that is used by the state, a political subdivision, or a state-supported institution of higher education pursuant to the provisions of any lease or rental agreement for at least a one-year term, with or without an option to purchase, and pursuant to which the subject real property is used for purposes of the state, political subdivision, or institution of higher education, as applicable, shall be exempt from the levy and collection of property tax. If the state or any political subdivision or state-supported institution of higher education enters into a lease or rental agreement or is already in a lease or rental agreement on or after January 1, 2009, and is exempt from the levy and collection of property tax pursuant to this section, the state, political subdivision, or state-supported institution of higher education, as applicable, shall file a copy of the lease or rental agreement with the county assessor’s office. The state or a political subdivision or institution of higher education shall notify the county assessor’s office in the event that the lease or rental agreement is terminated prior to the term stated in such lease or rental agreement. Nothing in this paragraph (b) shall affect property tax exemptions allowed pursuant to section 8-82-104, 22-32-127, 29-4-227, 30-11-104.2, 31-15-802, or 43-1-214, C.R.S.

(B) The state, a political subdivision, or a state-supported institution of higher education shall reduce, deduct, or offset property taxes from rent due under any lease or rental agreement pursuant to sub-subparagraph (A) of this subparagraph (I). Upon receipt of a lease or rental agreement for the state, a political subdivision, or a state-supported institution of higher education, the county assessor shall send a notice to the landlord acknowledging receipt of the lease or rental agreement. The notice shall identify the property, the property address, and the parties to the lease or rental agreement.

(C) To the extent that real property taxes are shared and payable by one or more tenants under the lease of property that are not the state, a political subdivision, or a state-supported institution of higher education, real property taxes otherwise due but for the application of this paragraph (b) shall be deemed taxes paid by the property owner or the landlord of a property leased in part to the state, a political subdivision, or a state-supported institution of higher education.

(D) Only a tenant that is the state, a political subdivision, or a state-supported institution of higher education shall receive any benefit related to the tenant’s property tax-exempt status pursuant to this paragraph (b).

(E) It is the general assembly’s intent that the application of this paragraph (b) be cost-neutral in that the tax reduction and the rent reduction pursuant to this paragraph (b) are equal.

(II) For purposes of this paragraph (b), “state-supported institution of higher education” includes, but need not be limited to, all postsecondary institutions in the state supported in whole or in part by state funds, including junior colleges and community colleges, extension programs of the state-supported universities and colleges, local district colleges, area vocational schools, and the institutions governed by the regents of the university of Colorado.

(2) A leasehold interest in real or personal property that is owned by the state or by a political subdivision of the state and that has been leased to a private person, the use and possession of which has been leased back to the state or a political subdivision of the state, shall be exempt from the levy and collection of property tax during the term of the use and possession of the property by the state or a political subdivision of the state. Property that is the subject of a leveraged leasing agreement executed by the state or by a political subdivision of the state shall be treated as tax-exempt property owned by the state for purposes of any state or local tax.

(3) The lease of property by a political subdivision of the state to a private person and the sublease of the property back to the political subdivision of the state pursuant to a leveraged leasing agreement shall not cause the private person to whom the property has been leased to incur any liability in tort by virtue of the private person's status as a lessor under the leveraged leasing agreement.

Source: **L. 89:** Entire article R&RE, p. 1477, § 1, effective April 23. **L. 2003:** Entire section amended, p. 1720, § 3, effective May 14. **L. 2008:** (1) amended, p. 1631, § 1, effective August 5. **L. 2009:** (1)(b)(I) amended, (HB 09-1365), ch. 320, p. 1710, § 1, effective June 1.

Editor's note: This section is similar to former § 39-3-101 (1)(p) as it existed prior to 1989.

39-3-125. Church property - used as residence - exemption - limitation. (Repealed)

Source: **L. 89:** Entire article R&RE, p. 1478, § 1, effective April 23; entire section repealed, p. 1492, § 9, effective June 7.

Editor's note: Before its repeal, this section was similar to former § 39-3-102 as it existed prior to 1989.

39-3-126. Horticultural improvements - exemption - limitation - exception. Any increase in value of privately owned lands resulting from the planting of trees shall not be taken into account in determining the actual value of such lands for a period of thirty years from the date of planting such trees. This section shall apply to all lands so planted; however, in the event that any trees become sufficiently mature as to be of economic use and value prior to the expiration of thirty years, any increase in use and value shall be thereafter taken into account in determining the actual value of such lands.

Source: **L. 89:** Entire article R&RE, p. 1478, § 1, effective April 23.

Editor's note: This section is similar to former § 39-3-103 as it existed prior to 1989.

39-3-127. County fair property - exemption - limitation. Property, real and personal, of any association duly organized pursuant to the laws of this state for the purpose of holding county fairs to promote and advance the interests of agriculture, horticulture, animal husbandry, home economics, and the mechanical attributes thereof shall be exempt from the levy and collection of property tax so long as such property is actually and exclusively used for said purpose and not for pecuniary profit.

Source: **L. 89:** Entire article R&RE, p. 1478, § 1, effective April 23.

Editor's note: This section is similar to former § 39-3-104 as it existed prior to 1989.

39-3-128. Exempt property listed and valued. It is the duty of the assessor to list, appraise, and value all real property exempted from the levy and collection of property tax pursuant to the provisions of sections 39-3-106 to 39-3-113 or 39-3-116 and all property

otherwise exempt but taxable pursuant to the provisions of section 39-3-135, and such information shall be entered in the same detail as required for taxable property.

Source: L. 89: Entire article R&RE, p. 1478, § 1, effective April 23; entire section amended, p. 1492, § 8, effective June 7.

Editor's note: (1) This section is similar to former § 39-3-105 as it existed prior to 1989.

(2) Section 39-3-135, referenced in this section, was repealed, effective June 5, 1996, but has been left in for historical purposes.

ANNOTATION

Annotator's note. Since § 39-3-128 is similar to § 39-3-105 as it existed prior to the 1989 repeal and reenactment of this article, a relevant case construing that provision has been included in the annotations to this section.

When taxpayer may institute declaratory action to test right to exemption. Where property has been exempted by law from taxation and where a municipality attempts to tax that

property, the taxpayer may institute a declaratory action to test the right of his property to be exempted from such taxes. *City & County of Denver v. Spears Free Clinic Hosp. for Poor Children*, 142 Colo. 347, 350 P.2d 1057 (1960).

Injunction may issue to prevent collection of taxes on exempt property. *City & County of Denver v. Spears Free Clinic Hosp. for Poor Children*, 142 Colo. 347, 350 P.2d 1057 (1960).

39-3-129. Proportional valuation - exempt property. (1) Except as otherwise provided in subsection (2) of this section, whenever any real property that was previously taxable becomes legally exempt from the levy and collection of property tax or any real property that was previously legally exempt from the levy and collection of property tax becomes taxable, the valuation for assessment of the real property shall be a proportion of the valuation for assessment of the real property for the entire taxable year based upon the ratio of the portion of the taxable year in which the property is taxable to the entire taxable year. In the event the real property is partially leased, loaned, or otherwise made available to and used by a business conducted for profit, the determination as to what portion of the real property is so utilized shall be made by the administrator on the basis of the facts existing on the annual assessment date for the real property. The administrator shall have the authority to determine the actual value of the nonexempt portion of the property in relation to the actual value of the entire property by using the ratio of the square foot area of the property utilized by the business conducted for profit to the total square foot area of the property. Where shown to be more appropriate, in order to determine the relationship between the actual value of the nonexempt portion of the property and the actual value of the total property, the administrator may employ the ratio of the portion as measured in hours of any calendar year in which the property is leased, loaned, or otherwise made available to and used by any business conducted for profit to the entire calendar year.

(2) The provisions of subsection (1) of this section shall not be applicable to household furnishings.

Source: L. 89: Entire article R&RE, p. 1478, § 1, effective April 23. L. 96: (1) amended, p. 44, § 2, effective March 20; (1) amended, p. 1200, § 4, effective June 1.

Editor's note: (1) This section is similar to former § 39-3-106 as it existed prior to 1989.

(2) Amendments to subsection (1) by Senate Bill 96-006 and House Bill 96-1113 were harmonized.

Cross references: For the legislative declaration contained in the 1996 act amending subsection (1), see section 1 of chapter 16, Session Laws of Colorado 1996.

39-3-130. Change in tax status of property - effective date - tax liability. (1) (a) (I) Whenever any real property that was previously taxable becomes legally exempt from the levy and collection of property tax for any reason, the person conveying the real property shall be relieved from all further tax obligations with respect to the real

property on the date title thereto is conveyed by agreement or on the date title thereto is conveyed pursuant to a court order.

(II) On and after January 1, 1996, whenever any personal property that was previously taxable becomes legally exempt from the levy and collection of property tax for any reason, the exempt status shall become effective on the assessment date following the change in status. If the change in status occurred due to the conveyance of the personal property, the person conveying the personal property shall not be relieved of any tax obligation with respect to the personal property for the property tax year in which the conveyance occurred.

(b) (I) Except as otherwise provided in subsection (2) of this section, whenever any real property that was previously exempt from the levy and collection of property tax becomes taxable, the person acquiring title to the real property shall be liable for subsequent tax obligations with respect to the real property on the date title thereto is acquired by the person.

(II) On and after January 1, 1996, except as otherwise provided in subsection (2) of this section, whenever any personal property that was previously exempt from the levy and collection of property tax becomes taxable, the taxable status shall become effective on the assessment date following the change in status. If the change in status occurred due to conveyance of the personal property, the person acquiring title to the personal property shall not be liable for any tax obligation with respect to the personal property for the property tax year in which the conveyance occurred.

(2) Whenever any personal property consisting of inventory, as defined in section 39-1-102 (7.2), becomes taxable because the personal property has become subject to a lease or rental agreement, the lessor shall not be responsible for any tax obligation on the property for the property tax year in which the agreement was executed.

Source: L. 89: Entire article R&RE, p. 1479, § 1, effective April 23. L. 96: Entire section amended, p. 45, § 3, effective March 20.

Editor's note: This section is similar to former § 39-3-107 as it existed prior to 1989.

Cross references: For the legislative declaration contained in the 1996 act amending this section, see section 1 of chapter 16, Session Laws of Colorado 1996.

39-3-131. Entire property becomes tax-exempt. Whenever any property which was previously taxable becomes exempt from the levy and collection of property tax, the treasurer shall accept payment of property taxes levied on such property for the current taxable year. The amount of such property taxes shall be calculated on the basis of the property tax levy on such property in the preceding taxable year and prorated to the date upon which title to such property was conveyed.

Source: L. 89: Entire article R&RE, p. 1479, § 1, effective April 23.

Editor's note: This section is similar to former § 39-3-108 as it existed prior to 1989.

39-3-132. Portion of property becomes tax-exempt. Whenever only a portion of a parcel, tract, or lot of real property which was previously taxable becomes exempt from the levy and collection of property tax for any reason, the treasurer may, upon the basis of an appraisal and computation of the valuation for assessment of such property by the assessor, either collect the property taxes thereon for the current taxable year, calculated on the basis of the property tax levy on such property during the preceding taxable year and prorated to the date upon which title to such property was conveyed, or, if the treasurer is satisfied that there is sufficient taxable real property remaining to satisfy any lien for the amount of property taxes payable on such portion, he may defer collection of the property taxes until the following taxable year. In the event the prorated taxes on such portion are collected, the owner of the remainder of such real property shall be credited with the full amount of taxes collected when the property tax levy for the current taxable year has been fixed and made and the correct amount of property taxes determined.

Source: L. 89: Entire article R&RE, p. 1479, § 1, effective April 23.

Editor's note: This section is similar to former § 39-3-109 as it existed prior to 1989.

ANNOTATION

Where proportionate part of building exempt, proportionate part of lot exempt. If a certain proportionate part of a building is exempted under an equitable apportionment of its use as to charitable and noncharitable purposes, then a similar equitable apportionment as to

charitable and noncharitable uses must be made as to the lot that supports it. *Hanagan v. Rocky Ford Knights of Pythias Bldg. Ass'n*, 101 Colo. 545, 75 P.2d 780 (1938) (decided under former law).

39-3-133. Payment of property taxes extinguishes lien. Payment to the treasurer of prorated property taxes for the current taxable year, as provided for in sections 39-3-131 and 39-3-132, together with payment of any other unpaid property taxes, delinquent interest, or charges thereon, shall extinguish the lien for property taxes on such property, or a portion thereof; however, if only a portion of any parcel, tract, or lot of real property becomes exempt from the levy and collection of property tax and no property taxes are collected at that time, the lien of property taxes levied or to be levied shall attach to the remaining portion of such real property.

Source: L. 89: Entire article R&RE, p. 1479, § 1, effective April 23. L. 92: Entire section amended, p. 2223, § 4, effective April 9.

Editor's note: This section is similar to former § 39-3-110 as it existed prior to 1989.

39-3-134. Condemnation by tax-exempt agency - duties of treasurer. In all cases where an entire property, or a portion of any parcel, tract, or lot of real property, is likely to become exempt from the levy and collection of property tax through exercise of the power of eminent domain, the treasurer shall be joined as a party respondent in any such eminent domain action, and, upon joinder and notice of the proceedings, the treasurer shall assert a claim for the amount of any prorated property taxes for the current taxable year on such property, and all other unpaid property taxes, delinquent interest, or charges thereon, with the clerk of the court in which the proceedings are filed. Upon institution of any such proceedings, the lien of property taxes levied and to be levied shall be transferred from the real property acquired or sought to be acquired to any money awarded or to be awarded for the taking of such real property. Nothing in this section shall require any treasurer to file a claim in any such proceedings involving acquisition of only a portion of any real property if the treasurer is satisfied that there is sufficient taxable real property remaining after the taking of such portion to satisfy any lien for the amount of property taxes payable on such portion taken.

Source: L. 89: Entire article R&RE, p. 1480, § 1, effective April 23. L. 92: Entire section amended, p. 2224, § 5, effective April 9.

Editor's note: This section is similar to former § 39-3-111 as it existed prior to 1989.

ANNOTATION

Annotator's note. Since § 39-3-134 is similar to § 39-3-111 as it existed prior to the 1989 repeal and reenactment of this article, relevant cases construing that provision have been included in the annotations to this section.

Burden of joining county treasurer in proceeding. This section places the burden of joining the county treasurer on the condemning authority. *Hayden v. Bd. of County Comm'rs*, 41 Colo. App. 102, 580 P.2d 830 (1978).

Applied in *Southworth v. Dept. of Hwys.*, 176 Colo. 82, 489 P.2d 204 (1971).

39-3-135. Taxation of exempt property - taxes not to become lien. (Repealed)

Source: **L. 89:** Entire article R&RE, p. 1480, § 1, effective April 23. **L. 96:** Entire section repealed, p. 1851, § 3, effective June 5.

Editor's note: Before its repeal, this section was similar to former § 39-3-112 as it existed prior to 1989.

39-3-136. Legislative declaration - taxation of exempt property - possessory interests. (Repealed)

Source: **L. 96:** Entire section added, p. 1849, § 1, effective June 5. **L. 2002:** (2) amended, p. 1032, § 68, effective June 1; entire section repealed, p. 1009, § 6, effective August 7.

39-3-137. Organizations with tax-exempt status - forgiveness of taxes owed.

(1) Subject to the provisions of subsection (2) of this section, any organization that, as of August 5, 2008, owes taxes that have been levied on real or personal property shall not be required to pay the balance of the taxes owed on or after August 5, 2008, if the organization meets the following requirements:

(a) The organization is a religious, charitable, or educational organization exempt from general taxation on real and personal property pursuant to sections 39-3-106 to 39-3-113 and 39-3-116;

(b) The organization has, before August 5, 2008, filed an application for exemption and been granted an exemption from general taxation on real and personal property pursuant to section 39-2-117;

(c) The organization has, before August 5, 2008, and after receiving an exemption from property tax, filed an annual report required for the continuation of property tax-exempt status pursuant to section 39-2-117 (3), but the report was determined to be incomplete or otherwise incorrect when filed; and

(d) The organization, as a result of the incomplete or incorrect report referenced in paragraph (c) of this subsection (1), was denied tax-exempt status for one or more property tax years and received a property tax bill for such year or years.

(2) Any waiver of the balance of taxes owed by an organization pursuant to subsection (1) of this section shall be contingent upon the reestablishment of the organization's tax-exempt status by the property tax administrator, as authorized by the state board of equalization.

(3) The state board of equalization may authorize the property tax administrator to reestablish tax-exempt status for any organization that meets the criteria specified in paragraphs (a) to (d) of subsection (1) of this section and that paid all or any portion of a property tax bill for a year or years in which the organization was denied tax-exempt status.

Source: **L. 2008:** Entire section added, p. 457, § 1, effective August 5. **L. 2009:** (2) and (3) amended, (SB 09-042), ch. 176, p. 782, § 5, effective August 5.

PART 2

PROPERTY TAX EXEMPTION FOR QUALIFYING
SENIORS AND DISABLED VETERANS

39-3-201. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) Section 3.5 of article X of the state constitution, which was approved by the registered electors of the state at the 2000 general election and amended by the registered electors of the state at the 2006 general election, provides property tax exemptions for qualifying seniors and qualifying disabled veterans;

(b) It is within the legislative prerogative of the general assembly to enact legislation to implement section 3.5 of article X of the state constitution that will ensure compliance with the requirements of said section and facilitate its operation;

(c) In enacting legislation to implement section 3.5 of article X of the state constitution the general assembly has attempted to interpret the provisions of section 3.5 of article X of the state constitution in a manner that gives its words their natural and obvious significance;

(d) This part 2 reflects the considered judgment of the general assembly regarding the meaning and implementation of the provisions of section 3.5 of article X of the state constitution.

Source: L. 2001: Entire part added, p. 460, § 1, effective April 25. **L. 2007:** (1)(a) amended, p. 476, § 1, effective April 15.

39-3-202. Definitions. As used in this part 2, unless the context otherwise requires:

(1) "Division" means the division of veterans affairs in the department of military and veterans affairs.

(1.5) "Exemption" means the property tax exemptions for qualifying seniors and qualifying disabled veterans allowed by section 39-3-203.

(2) (a) "Owner-occupier" means an individual who:

(I) Is an owner of record of residential real property that he or she occupies as his or her primary residence;

(II) Is not an owner of record of the residential real property that he or she occupies as his or her primary residence, but is:

(A) The spouse of an individual who is an owner of record of the residential real property and who also occupies the residential real property as his or her primary residence; or

(B) The surviving spouse of an individual who was an owner of record of the residential real property and who occupied the residential real property with the surviving spouse as his or her primary residence until his or her death; or

(III) Is not an owner of record of the residential real property that he or she occupies as his or her primary residence, only because the property has been purchased by or transferred to a trust, a corporate partnership, or any other legal entity solely for estate planning purposes and is the maker of the trust or a principal of the corporate partnership or other legal entity;

(IV) (A) Occupies residential real property as his or her primary residence; and

(B) Is the spouse of a person who also occupies the residential real property, who is not the owner of record of the property only because the property has been purchased by or transferred to a trust, a corporate partnership, or any other legal entity solely for estate planning purposes, and who is the maker of the trust or a principal of the corporate partnership or other legal entity; and

(V) (A) Occupies residential real property as his or her primary residence; and

(B) Is the surviving spouse of a person who occupied the residential real property with the surviving spouse until his or her death, who was not the owner of record of the property at the time of his or her death only because the property had been purchased by or transferred to a trust, a corporate partnership, or any other legal entity solely for estate

planning purposes prior to his or her death, and who was the maker of the trust or a principal of the corporate partnership or other legal entity prior to his or her death.

(b) "Owner-occupier" also includes any individual who, but for the confinement of the individual to a hospital, nursing home, or assisted living facility, would occupy residential real property as his or her primary residence and would meet one or more of the ownership criteria specified in paragraph (a) of this subsection (2), if the residential real property:

(I) Is temporarily unoccupied; or

(II) Is occupied by the spouse or a financial dependent of the individual.

(3) "Owner of record" means an individual whose name appears on a valid recorded deed to residential real property as an owner of the property.

(3.5) "Qualifying disabled veteran" means an individual who has served on active duty in the United States armed forces, including a member of the Colorado National Guard who has been ordered into the active military service of the United States, has been separated therefrom under honorable conditions, and has established a service-connected disability that has been rated by the United States department of veterans affairs as one hundred percent permanent and total disability pursuant to a law or regulation administered by the department.

(4) "Surviving spouse" means an individual who was legally married to another individual at the time of the other individual's death and who has not remarried.

Source: L. 2001: Entire part added, p. 461, § 1, effective April 25. L. 2007: (1) amended and (1.5) and (3.5) added, p. 476, § 2, effective April 15.

39-3-203. Property tax exemption - qualifications. (1) For the property tax year commencing January 1, 2002, for property tax years commencing on or after January 1, 2006, but before January 1, 2009, and for property tax years commencing on or after January 1, 2012, fifty percent of the first two hundred thousand dollars of actual value of residential real property that as of the assessment date is owner-occupied and is used as the primary residence of the owner-occupier shall be exempt from taxation, and for property tax years commencing on or after January 1, 2003, but before January 1, 2006, and on or after January 1, 2009, but before January 1, 2012, fifty percent of zero dollars of actual value of residential real property that as of the assessment date is owner-occupied and is used as the primary residence of the owner-occupier shall be exempt from taxation if:

(a) (I) The owner-occupier is sixty-five years of age or older as of the assessment date and has owned and occupied such residential real property as his or her primary residence for the ten years preceding the assessment date; or

(II) The owner-occupier is the surviving spouse of an owner-occupier who previously qualified for a property tax exemption for the same residential real property under subparagraph (I) of this paragraph (a); and

(b) The owner-occupier has completed and filed an exemption application in the manner required by section 39-3-205 and the circumstances that qualify the property for the exemption have not changed since the filing of the application. Under no circumstances shall an exemption be allowed for property taxes assessed during any property tax year prior to the year in which an owner-occupier first files an exemption application.

(1.5) (a) For property tax years commencing on or after January 1, 2007, fifty percent of the first two hundred thousand dollars of actual value of residential real property that as of the assessment date is owner-occupied and is used as the primary residence of an owner-occupier who is a qualifying disabled veteran shall be exempt from taxation if:

(I) The owner-occupier has completed and filed an exemption application in the manner required by section 39-3-205; and

(II) The circumstances that qualify the property for the exemption have not changed since the filing of the application.

(b) Under no circumstances shall an exemption be allowed for property taxes assessed during any property tax year prior to the year for which an owner-occupier first files an exemption application.

(2) Notwithstanding the provisions of paragraph (a) of subsection (1) and subsection (1.5) of this section, if ownership of residential real property that qualified for an exemption

as of the assessment date changes after the assessment date, an exemption shall be allowed only if an owner-occupier whose status as an owner-occupier qualified the property for the exemption has filed an exemption application by the deadline for filing exemption applications specified in section 39-3-205 (1).

(3) An individual who owns and occupies a dwelling unit in a common interest community, as defined in section 38-33.3-103 (8), C.R.S., as his or her primary residence, or who owns residential real property consisting of multiple-dwelling units and occupies one of the dwelling units as his or her primary residence, shall be allowed an exemption only with respect to the dwelling unit that the individual occupies as his or her primary residence.

(4) No more than one exemption per property tax year shall be allowed for a single dwelling unit of residential real property, regardless of how many owner-occupiers use the dwelling unit as their primary residence or whether one or more owner-occupiers qualify for exemptions under both subsections (1) and (1.5) of this section. The full amount of the exemption allowed by subsection (1) or (1.5) of this section shall be allowed with respect to any single dwelling unit of residential real property so long as any owner-occupier of the dwelling unit satisfies the requirements of subsection (1) or (1.5) of this section, and the fact that any other person who does not satisfy said requirements is also an owner of record of the dwelling unit shall not affect the amount of the exemption.

(5) For purposes of this part 2, two individuals who are legally married, but who own more than one piece of residential real property, shall be deemed to occupy the same primary residence and may claim no more than one exemption.

(6) (a) Notwithstanding the ten-year occupancy requirement set forth in subparagraph (I) of paragraph (a) of subsection (1) of this section, an owner-occupier who has not actually owned and occupied residential real property for which the owner-occupier has claimed an exemption under said subsection (1) for the ten years preceding the assessment date shall be deemed to have met the ten-year requirement and shall be allowed an exemption under said subsection (1) with respect to the property if:

(I) The owner-occupier would have qualified for the exemption with respect to other residential real property that the owner-occupier owned and occupied as his or primary residence before moving to the residential real property for which an exemption is claimed but for the fact that the other property was condemned by a governmental entity through an eminent domain proceeding; and

(II) The owner-occupier has not owned and occupied residential property as his or her primary residence other than the residential real property for which an exemption is claimed since the condemnation occurred.

(b) An owner-occupier who claims an exemption with respect to residential real property that he or she has not actually owned and occupied as his or her primary residence for the ten years preceding the assessment date as permitted by paragraph (a) of this subsection (6) shall provide to the assessor with whom the owner-occupier files the exemption application any information that the assessor may reasonably require to verify that the owner-occupier is entitled to an exemption.

Source: L. 2001: Entire part added, p. 462, § 1, effective April 25. L. 2003: IP(1) amended, p. 1476, § 1, effective May 1. L. 2007: IP(1), (2), (4), and IP(6)(a) amended and (1.5) added, p. 477, § 3, effective April 15. L. 2009: IP(1) amended, (SB 09-276), ch. 437, p. 2426, § 1, effective June 4. L. 2010: IP(1) amended, (SB 10-190), ch. 311, p. 1461, § 2, effective May 27.

39-3-204. Notice of property tax exemption. No later than May 1, 2002, and no later than each May 1 thereafter, each assessor shall mail to each residential real property address in the assessor's county notice of the exemption allowed by section 39-3-203 (1). No later than May 1, 2008, and no later than each May 1 thereafter, each assessor also shall mail to each residential property address in the assessor's county notice of the exemption allowed by section 39-3-203 (1.5). No later than May 1, 2007, the division shall mail to the residential property address of each person residing in the state who the division believes is a qualifying disabled veteran notice of the exemption allowed by section 39-3-203 (1.5)

for the 2007 property tax year. However, the sending of notice to a person by the division does not constitute a determination by the division that the person sent notice is entitled to an exemption. The notice shall be in a form prescribed by the administrator, who shall consult with the division before prescribing the form of the notice of the exemption allowed by section 39-3-203 (1.5), and shall include a statement of the eligibility criteria for the exemptions and instructions for obtaining an exemption application. To reduce mailing costs, an assessor may coordinate with the treasurer of the same county to include notice with the tax statement for the previous property tax year mailed pursuant to section 39-10-103 or may include notice with the notice of valuation mailed pursuant to section 39-5-121 (1) (a).

Source: L. 2001: Entire part added, p. 464, § 1, effective April 25. **L. 2007:** Entire section amended, p. 478, § 4, effective April 15.

39-3-205. Exemption applications - penalty for providing false information - confidentiality. (1) (a) To claim the exemption allowed by section 39-3-203 (1), an individual shall file with the assessor a completed exemption application no later than July 15 of the first property tax year for which the exemption is claimed. An application returned by mail shall be deemed filed on the date it is postmarked.

(b) To claim the exemption allowed by section 39-3-203 (1.5), an individual shall file with the division a completed exemption application no later than July 1 of the first property tax year for which the exemption is claimed. An application returned by mail shall be deemed filed on the date it is postmarked.

(2) (a) An exemption application shall be a form prescribed by the administrator, who shall consult with the division before prescribing the form of the application for the exemption allowed by section 39-3-203 (1.5), and shall require an applicant to provide the following information:

- (I) The applicant's name, mailing address, date of birth, and social security number;
- (II) The address and schedule or parcel number of the residential real property for which an exemption is claimed;
- (III) The name and social security number of each individual who occupies as his or her primary residence the residential real property for which an exemption is claimed;
- (IV) If a trust is the owner of record of the residential real property for which an exemption is claimed, the names of the maker of the trust, the trustee, and the beneficiaries of the trust;
- (V) If a corporate partnership or other legal entity is the owner of record of the residential real property for which an exemption is claimed, the names of the principals of the corporate partnership or other legal entity;
- (VI) An affirmation, in a form prescribed by the administrator, that the applicant believes, under penalty of perjury in the second degree, as defined in section 18-8-503, C.R.S., that all information provided by the applicant is correct; and
- (VII) Any other information that the administrator may reasonably require as necessary for the proper and efficient administration of the exemption.

(b) The exemption application shall also contain a statement that an applicant, or in the case of residential real property for which the owner of record is a trust, the trustee, has a legal obligation to inform the assessor within sixty days of any change in the ownership or occupancy of residential real property for which an exemption has been applied for or allowed that would prevent an exemption from being allowed for the property.

(2.5) For the purpose of verifying the eligibility of each applicant for the exemption allowed to qualifying disabled veterans under section 39-3-203 (1.5) efficiently and with minimal inconvenience to each applicant, the division shall determine whether an applicant for the exemption is a qualifying disabled veteran. With respect to any application timely filed by July 1 pursuant to paragraph (b) of subsection (1) of this section, the division shall, if possible, determine whether the applicant is a qualifying disabled veteran and send notice of its determination to the applicant on or before the immediately succeeding August 1. If the division determines that the applicant is a qualifying disabled veteran, it shall also send notice of its determination and a copy of the exemption application to the assessor for the

county where the property is located. If the division is unable to determine whether the applicant is a qualifying disabled veteran on or before said August 1, it shall send preliminary notice to both the applicant and the assessor that its determination is pending and shall follow up the preliminary notice by sending final notice of its ultimate determination to the applicant and, together with a copy of the exemption application, to the assessor as soon as possible thereafter.

(3) (a) In addition to any penalties prescribed by law for perjury in the second degree, an applicant who knowingly provides false information on an exemption application or files more than one exemption application in any property tax year:

(I) Shall not be entitled to an exemption;

(II) Shall be required to pay, to the treasurer of any county in which an exemption was improperly allowed due to the provision by the applicant of false information or the filing by the applicant of more than one exemption application, an amount equal to the amount of property taxes not paid as a result of the exemption being improperly allowed; and

(III) Shall, upon conviction of perjury, be required to pay to the treasurer of any county in which an invalid exemption application was filed an additional amount equal to twice the amount of the property taxes that would not have had to be paid had the exemption application been valid plus interest. Interest shall be calculated at the annual rate calculated pursuant to section 39-21-110.5 (2) and (3) from the date the invalid exemption application was filed until the date the applicant makes the payment required by this subparagraph (III).

(b) If an applicant or a trustee fails to inform the assessor within sixty days of any change in the ownership or occupancy of residential real property for which an exemption has been applied for or allowed that would prevent an exemption from being allowed for the property as required by paragraph (b) of subsection (2) of this section:

(I) An exemption shall not be allowed with respect to the residential real property; and

(II) The applicant or trustee shall be required to pay, to the treasurer of any county in which an exemption was improperly allowed due to the applicant's or trustee's failure to immediately inform the assessor of any change in the ownership or occupancy of residential real property, an amount equal to the amount of property taxes not paid as a result of the exemption being improperly allowed plus interest. Interest shall be calculated at the annual rate calculated pursuant to section 39-21-110.5 (2) and (3) from the date on which the change in the ownership or occupancy occurred until the date the applicant makes the payment required by this subparagraph (II).

(c) Any amount required to be paid to a treasurer pursuant to paragraph (a) or (b) of this subsection (3) shall be deemed part of the lien of general taxes imposed on the person required to pay the amount and shall have the priority specified in section 39-1-107 (2).

(4) (a) Completed exemption applications shall be kept confidential; except that:

(I) (A) An assessor or the division may release statistical compilations or informational summaries of any information contained in exemption applications and shall provide a copy of an exemption application to the applicant who returned the application, the treasurer of the same county as the assessor, the administrator, the state treasurer, or the state auditor upon request or as otherwise required by this part 2.

(B) An assessor or the division may introduce a copy of an exemption application as evidence in any administrative hearing or legal proceeding in which the accuracy or veracity of the exemption application is at issue so long as neither the applicant's social security number nor any other social security number set forth in the application are divulged.

(II) A treasurer, the administrator, the state treasurer, or the state auditor shall keep confidential each individual exemption application that it may receive from an assessor or the division but may release statistical compilations or informational summaries of any information contained in exemption applications and may introduce a copy of an exemption application as evidence in any administrative hearing or legal proceeding in which the accuracy or veracity of the exemption application is at issue so long as neither the applicant's social security number nor any other social security number set forth in the application are divulged.

(b) Notwithstanding the provisions of paragraph (a) of this subsection (4), an assessor, the division, a treasurer, the administrator, the state treasurer, or the state auditor shall not

give any other person any listing of individuals who have applied for an exemption or any other information that would enable a person to easily assemble a mailing list of individuals who have applied for an exemption.

Source: **L. 2001:** Entire part added, p. 464, § 1, effective April 25. **L. 2007:** (1), IP(2)(a), and (4) amended and (2.5) added, p. 478, § 5, effective April 15. **L. 2011:** (2.5) amended, (HB 11-1226), ch. 73, p. 201, § 1, effective March 29.

39-3-206. Notice to individuals returning incomplete or nonqualifying exemption applications - denial of exemption - administrative remedies. (1) (a) Except as otherwise provided in paragraph (a.5) of subsection (2) of this section, an assessor shall only grant the exemption allowed to qualifying seniors under section 39-3-203 (1) to an applicant who has timely returned an exemption application in accordance with section 39-3-205 (1) (a) that establishes that the applicant is entitled to the exemption.

(b) If the information provided on or with an application for the exemption allowed to qualifying seniors under section 39-3-203 (1) indicates that the applicant is not entitled to the exemption, or is insufficient to allow the assessor to determine whether or not the applicant is entitled to the exemption, the assessor shall deny the application and mail to the applicant a statement providing the reasons for the denial and informing the applicant of the applicant's right to contest the denial pursuant to subsection (2) of this section. The assessor shall mail the statement no later than August 15 of the property tax year for which the exemption application was filed.

(1.5) (a) Except as otherwise provided in paragraph (a.7) of subsection (2) of this section, the division shall only accept an application for the exemption allowed to qualifying disabled veterans under section 39-3-203 (1.5) if the applicant timely returned the exemption application in accordance with section 39-3-205 (1) (b), and an assessor shall only grant the exemption if the division verifies that the applicant is a qualified disabled veteran and the exemption application forwarded by the division to the assessor pursuant to section 39-3-205 (2.5) establishes that the applicant meets the other requirements to be entitled to the exemption.

(b) If the information provided on or with an application for the exemption allowed to qualifying disabled veterans under section 39-3-203 (1.5) that is forwarded by the division to an assessor pursuant to section 39-3-205 (2.5) indicates that the applicant is not entitled to the exemption, or is insufficient to allow the assessor to determine whether or not the applicant is entitled to the exemption, the assessor shall deny the application and mail to the applicant a statement providing the reasons for the denial and informing the applicant of the applicant's right to contest the denial pursuant to subsection (2) of this section. The assessor shall mail the statement no later than August 15 of the property tax year for which the exemption application was filed.

(2) (a) An applicant whose exemption application has been denied pursuant to paragraph (b) of subsection (1) or paragraph (b) of subsection (1.5) of this section may contest the denial by requesting a hearing before the county commissioners sitting as the county board of equalization no later than September 15 of the property tax year for which the exemption application was filed. The hearing shall be held on or after September 1 and no later than October 1 of the property tax year for which the exemption application was filed, and the decision of the county board of equalization shall not be subject to further administrative appeal by either the applicant or the assessor. An applicant may not contest a determination by the division that the applicant is not a qualifying disabled veteran at a hearing requested pursuant to this paragraph (a).

(a.5) An individual who wishes to claim the exemption for qualifying seniors allowed by section 39-3-203 (1), but who has not timely filed an exemption application with the assessor, may request that the assessor waive the application deadline and allow the individual to file a late exemption application no later than the September 15 that immediately follows the original application deadline. The assessor may accept an application if, in the assessor's sole discretion, the applicant shows good cause for not timely filing an application, but the property tax administrator shall prepare and furnish to each assessor uniform standards to be applied by the assessor in determining whether an

applicant has shown good cause. The assessor shall grant an exemption if an accepted late application establishes that the applicant is entitled to the exemption. A decision of an assessor to allow or disallow the filing of a late application or to grant or deny an exemption to an applicant who has filed a late application is final, and an applicant who is denied late filing or an exemption may not contest the denial.

(a.7) An individual who wishes to claim the exemption for qualifying disabled veterans allowed by section 39-3-203 (1.5), but who has not timely filed an exemption application with the division, may request that the division waive the application deadline and allow the individual to file a late exemption application no later than the September 1 that immediately follows the original application deadline. The division may accept an application if, in the division's sole discretion, the applicant shows good cause for not timely filing an application. If the division accepts a late application, it shall determine whether the applicant is a qualifying disabled veteran and shall mail notice of its determination to the applicant no later than the September 25 that immediately follows the late application deadline. If the division determines that a veteran is a qualifying disabled veteran, it shall mail a copy of the notice of its determination to the assessor for the county in which the property for which the applicant has claimed the exemption is located and shall include with the notice a copy of the applicant's exemption application. The assessor shall grant an exemption if the notice and application forwarded by the division to the assessor establish that the applicant is entitled to the exemption. A decision of the division to allow or disallow the filing of a late application or of an assessor to grant or deny an exemption to an applicant who has filed a late application is final, and an applicant who is denied late filing or an exemption may not contest the denial.

(b) The county board of equalization may appoint independent referees to conduct hearings requested pursuant to paragraph (a) of this subsection (2) on behalf of the county board and to make findings and submit recommendations to the county board for its final action.

Source: **L. 2001:** Entire part added, p. 466, § 1, effective April 25. **L. 2002:** (2) amended, p. 842, § 1, effective August 7. **L. 2003:** (1)(a) amended and (2)(a.5) added, p. 2479, §§ 1, 2, effective June 5. **L. 2007:** (1), (2)(a), and (2)(a.5) amended and (1.5) and (2)(a.7) added, pp. 480, 481, §§ 6, 7, effective April 15. **L. 2011:** (1.5) and (2)(a.7) amended, (HB 11-1226), ch. 73, p. 202, § 2, effective March 29.

39-3-207. Reporting of exemptions - reimbursement to local governmental entities - transfer of unencumbered balances. (1) No later than October 10, 2002, and no later than each October 10 thereafter, each assessor shall forward to the administrator a report on the exemptions allowed in his or her county for the current property tax year. The report shall include:

(a) A statement of the total amount of actual value of residential real property within the county that is exempted from taxation;

(b) With respect to each unit of residential real property for which an exemption is allowed:

(I) The legal description of the property;

(II) The schedule or parcel number for the property;

(III) The name and social security number of the applicant who claimed an exemption for the property and each additional person who occupies the property; and

(IV) A statement of the taxable and tax exempt value of the property; and

(c) For reports issued for the 2007 property tax year and for each subsequent property tax year, separate identification, in such form as the administrator may require, of the units of residential real property within the county exempted from taxation under section 39-3-203 (1.5) and of the total amount of actual value of the property so exempted.

(2) (a) (I) The administrator shall examine the reports sent by each assessor pursuant to subsection (1) of this section to ensure that no applicant has claimed more than one exemption. No later than November 1, 2002, and no later than each November 1 thereafter, if the administrator determines that an applicant has claimed more than one exemption, the administrator shall provide written notice to the applicant that the applicant has claimed

more than one exemption and is therefore not entitled to any exemption. The notice shall also include a statement specifying the deadline and procedures for protesting the denial of the exemptions claimed.

(II) An applicant whose claims for exemption are denied by the administrator pursuant to subparagraph (I) of this paragraph (a) may file a written protest with the administrator no later than November 15 of the year in which the exemptions were denied. The sole ground for a protest shall be that the applicant filed only one claim for an exemption and the protest shall specify property or properties identified by the administrator in the notice denying exemptions for which no exemption was claimed. The administrator shall request that any appropriate assessor check the assessor's records of exemption applications to determine whether the applicant filed a disputed exemption application and shall decide the protest accordingly. If a protest is denied, the administrator shall mail the applicant a written statement of the basis for the denial and a copy of each exemption application filed with an assessor that the applicant claimed had not been filed.

(b) No later than December 1, 2002, and no later than each December 1 thereafter, and after examining the reports sent by each assessor, denying claims for exemptions, and deciding protests in accordance with paragraph (a) of this subsection (2), the administrator shall provide written notice to the assessor of each county in which an exemption application has been denied because the applicant filed multiple exemption applications with the identity of the applicant who filed multiple exemption applications and the denial of the exemption.

(3) No later than April 1, 2003, and no later than each April 1 thereafter, to enable the state treasurer to issue a reimbursement warrant to each treasurer in accordance with subsection (4) of this section, each treasurer shall forward to the state treasurer a report on the exemptions allowed in his or her county for the previous property tax year. The report shall include:

(a) A statement of the total amount of actual value of residential real property within the county that was exempted from taxation and the total amount of property tax revenues lost by local governmental entities within the county as a result of the exemption that must be reimbursed by the state;

(b) With respect to each unit of residential real property for which an exemption was allowed:

(I) The legal description of the property;

(II) The schedule or parcel number for the property;

(III) The name of the applicant who claimed an exemption for the property and each additional person who occupies the property; and

(IV) A statement of the taxable and tax exempt value of the property and the amount of taxes due on the property; and

(c) For reports issued for the 2007 property tax year and for each subsequent property tax year, separate identification, in such form as the administrator may require, of the units of residential real property within the county exempted from taxation under section 39-3-203 (1.5), the total amount of actual value of the property so exempted, and the total amount of property tax revenues lost by local government entities within the county as a result of the exemption.

(4) (a) In accordance with section 3.5 of article X of the state constitution, no later than April 15, 2003, and each April 15 thereafter, the state treasurer shall issue a warrant to each treasurer for the amount needed to fully reimburse all local governmental entities within the treasurer's county for the amount of property tax revenues lost as a result of the application of the exemption to property taxes that accrued during the previous property tax year and are payable during the year in which the state treasurer issues the warrant. The reimbursement shall be paid from the state general fund and shall not be subject to the statutory limitation on state general fund appropriations set forth in section 24-75-201.1, C.R.S.

(b) Each treasurer shall distribute the total amount received from the state treasurer pursuant to paragraph (a) of this subsection (4) to the local governmental entities within the treasurer's county as if the lost tax revenues had been regularly paid. When a treasurer distributes said amount, the treasurer shall provide each local governmental entity with a statement of the amount distributed to the local governmental entity that represents

reimbursement received from the state for property tax revenues lost as a result of the exemption. In accordance with section 3.5 of article X of the state constitution, moneys distributed to a local governmental entity as reimbursement for property tax revenues lost as a result of the exemption shall not be included in the local governmental entity's fiscal year spending for purposes of section 20 of article X of the state constitution.

(5) Notwithstanding any provision of law to the contrary, the reports required by this section and the contents thereof shall be kept confidential by an assessor, a treasurer, the administrator, the state treasurer, or the state auditor; except that said persons may provide the reports to each other as required or authorized by law.

(6) On June 30, 2013, and on each June 30 thereafter, the state treasurer shall transfer to the senior services account within the older Coloradans cash fund, created pursuant to section 26-11-205.5 (5) (b), C.R.S., an amount equal to the amount by which the total estimated amount specified in the annual general appropriations act for the costs of this part 2 exceeds the total amount of all warrants issued by the state treasurer pursuant to paragraph (a) of subsection (4) of this section.

Source: **L. 2001:** Entire part added, p. 467, § 1, effective April 25. **L. 2002:** IP(1) amended, p. 842, § 2, effective August 7. **L. 2007:** (1)(c) and (3)(c) added and (3)(b)(III) amended, p. 482, §§ 8, 9, effective April 15. **L. 2012:** (6) added, (HB 12-1326), ch. 195, p. 777, § 4, effective May 22.

Cross references: For the legislative declaration in the 2012 act adding subsection (6), see section 1 of chapter 195, Session Laws of Colorado 2012.

39-3-208. Auditing of property tax exemption program. The state auditor shall periodically audit the property tax exemption program administered pursuant to this part 2 to ensure that the program is operating in compliance with section 3.5 of article X of the state constitution and this part 2. In connection with an audit, the state auditor may suggest means of improving the administration of the program. Upon request, an assessor, a treasurer, the administrator, or the state treasurer shall provide the state auditor with any exemption applications, reports, or other documents relevant to the administration of the program.

Source: **L. 2001:** Entire part added, p. 469, § 1, effective April 25.

Deferrals

ARTICLE 3.5

**Tax Deferral for the Elderly
and Military Personnel**

Law reviews: For article, "Survey of Colorado Tax Liens", see 14 Colo. Law. 1765 (1985); for article "An Update of Appendices from Collecting Pre- and Post-Judgment Interest in Colorado", see 15 Colo. Law. 990 (1986).

39-3.5-101.	Definitions.	39-3.5-105.7.	Prior deferrals to be treated as loans.
39-3.5-102.	Deferral of tax on homestead - qualifications - filing of claim.	39-3.5-106.	State treasurer to pay county treasurer an amount equivalent to deferred taxes.
39-3.5-103.	Property entitled to deferral.	39-3.5-107.	Repayment of loans - release of liens - disposition of payments.
39-3.5-104.	Claim form - contents.	39-3.5-108.	Notice to taxpayer regarding duty to claim deferral annually.
39-3.5-105.	Listing of tax-deferred property - tax as lien - interest accrual.		
39-3.5-105.5.	Loan of state moneys to taxpayers.		

39-3.5-109.	Failure to receive notices.	39-3.5-115.	Limitations on effect of article.
39-3.5-110.	Events requiring repayment of loans - notice to state treasurer.	39-3.5-116.	Deed or contract clauses preventing application for deferral prohibited - clauses void. (Repealed)
39-3.5-111.	Time for payment - delinquencies.	39-3.5-117.	Report. (Repealed)
39-3.5-112.	Election by spouse to continue tax deferral.	39-3.5-118.	Emergency property tax deferral for depositors of troubled industrial banks. (Repealed)
39-3.5-113.	Voluntary repayment of loans for deferred tax.	39-3.5-119.	Release of information identifying individuals claiming deferral.
39-3.5-114.	Deferred tax certificates not to be included in reserve or surplus. (Repealed)		

39-3.5-101. Definitions. As used in this article, unless the context otherwise requires:

(1) "Homestead" means the owner-occupied residence of the taxpayer and includes owner-occupied units in a condominium, townhouse, or similar structure and an owner-occupied mobile home.

(1.5) "Mobile home" means any wheeled vehicle, exceeding either eight feet in width or thirty-two feet in length, excluding towing gear and bumpers, without motive power, which is designed and commonly used for occupancy by persons for residential purposes, in either temporary or permanent locations, and which may be drawn over the public highways by a motor vehicle.

(1.8) "Person called into military service" means a member of the Army National Guard of the United States, the Army reserve, the Naval reserve, the Marine Corps reserve, the Air National Guard of the United States, the Air Force reserve, or the Coast Guard reserve who has been ordered to active duty pursuant to 10 U.S.C. sec. 12301 (a) or 12302 for a period of more than thirty consecutive days in a time of war or national emergency declared by the congress or the president of the United States. "Active duty" includes any period during which a person called into military service is absent from duty on account of sickness, wounds, leave, or other lawful cause.

(2) "Real property taxes" means all ad valorem taxes levied on a homestead, including special assessments and all other charges which are recoverable by law at the annual real estate tax sale, and includes special assessments and all other charges which are recoverable by law at the personal property tax sale of a mobile home, as provided in section 39-10-111.

(3) "Tax-deferred property" means the property upon which real property taxes are deferred pursuant to this article.

(4) "Taxpayer" means a person who has filed or whose guardian, conservator, or attorney-in-fact has filed a claim for deferral pursuant to this article or persons who have jointly filed a claim for deferral under this article.

Source: **L. 78:** Entire article added, p. 471, § 1, effective February 28, 1979. **L. 79:** (1) and (4) amended, p. 1411, § 1, effective January 1, 1980. **L. 88:** (1) and (2) amended and (1.5) added, p. 1283, § 9, effective January 1, 1989. **L. 2003:** (1.8) added, p. 2112, § 1, effective May 22.

39-3.5-102. Deferral of tax on homestead - qualifications - filing of claim.

(1) (a) Subject to the provisions of this article, a person who is sixty-five years of age or older or who is a person called into military service on January 1 of the year in which the person files a claim under this section may elect to defer the payment of real property taxes. To exercise this option, the taxpayer shall file a claim for deferral with the treasurer of the county in which the taxpayer's homestead is located. The claim shall be filed after January 1 and on or before April 1 of each year in which the taxpayer claims the deferral.

(b) Notwithstanding paragraph (a) of this subsection (1), a person called into military service at any time between January 1, 2003, and June 30, 2003, may defer the payment of real property taxes for the property tax year 2002 by filing a claim pursuant to this section on or before June 30, 2003.

(2) When a taxpayer who is sixty-five years of age or older or who is a person called into military service files a valid claim for deferral under subsection (1) of this section, it shall have the effect of:

(a) Deferring the payment of his real property taxes for the calendar year previous to the year in which the claim is filed;

(b) Continuing the deferral of taxes which have been deferred under this article for previous years which have not become delinquent pursuant to section 39-3.5-111;

(c) Terminating and releasing the lien for the general taxes so deferred created by section 39-1-107 and substituting therefor the lien for said deferred taxes created by section 39-3.5-105.

(2.5) A person called into military service may defer only the real property taxes payable in a year in which the person is a person called into military service. A person who is no longer a person called into military service may file a valid claim in a subsequent year to continue the deferral of taxes payable in a year in which the person was a person called into military service.

(3) If a guardian, conservator, or attorney-in-fact has been appointed for a taxpayer otherwise qualified to claim deferral of taxes under this article, the guardian, conservator, or attorney-in-fact may act for such taxpayer in claiming the deferral.

Source: L. 78: Entire article added, p. 472, § 1, effective February 28, 1979. **L. 2003:** (1) and IP(2) amended and (2.5) added, p. 2112, § 2, effective May 22.

39-3.5-103. Property entitled to deferral. (1) In order to qualify for real property tax deferral under this article, the property shall meet all of the following requirements at the time the claim is filed and so long thereafter as payment is deferred:

(a) The property must be the homestead of the taxpayer claiming the deferral.

(b) The taxpayer claiming the deferral must, by himself or jointly with another person residing in the homestead, own the fee simple estate or be purchasing the fee simple estate under a recorded instrument of sale or own the mobile home or be purchasing the mobile home under a recorded instrument of sale; except that nonresidence of the joint owner in the homestead because of ill health of the joint owner shall not prevent the taxpayer from meeting the requirement of this paragraph (b).

(c) The property for which the deferral is claimed must not be income-producing.

(d) Repealed.

(d.5) (I) On or after January 1, 2006, either of the following applies to the property:

(A) The owner of the property is a person who is sixty-five years of age or older, and the total value of all liens of mortgages and deeds of trust on the property, excluding any mortgage or deed of trust that the holder has agreed, on a form designated by the state treasurer, to subordinate to the lien of the state for deferred taxes, is less than or equal to seventy-five percent of the actual value of the property, as determined by the county assessor; or

(B) The owner of the property is a person called into military service, and the total value of all liens of mortgages and deeds of trust on the property, excluding any mortgage or deed of trust that the holder has agreed, on a form designated by the state treasurer, to subordinate to the lien of the state for deferred taxes, is less than or equal to ninety percent of the actual value of the property, as determined by the county assessor.

(II) For purposes of this paragraph (d.5), the actual value of the property shall be the most recent appraisal by the county assessor as of the time the claim for deferral is submitted to the county treasurer.

(e) All real property taxes for years prior to the year for which the election is made must be paid.

(f) The cumulative value of the deferral provided in this section plus the interest accrued on the deferral provided in section 39-3.5-105 (5) shall not exceed the market value of the property less the value of all mortgages which constitute liens upon the property and any other liens upon the property filed prior to the date of recordation of the certificate for deferral.

Source: **L. 78:** Entire article added, p. 472, § 1, effective February 28, 1979. **L. 79:** Entire section R&RE, p. 1411, § 2, effective January 1, 1980. **L. 88:** (1)(b) amended and (1)(f) added, p. 1283, § 10, effective January 1, 1989. **L. 2005:** (1)(d) amended and (1)(d.5) added, p. 877, § 1, effective June 1.

Editor's note: Subsection (1)(d)(II) provided for the repeal of subsection (1)(d), effective January 1, 2006. (See L. 2005, p. 877.)

39-3.5-104. Claim form - contents. (1) A taxpayer's claim for deferral shall be in writing on a form prescribed by the state treasurer and supplied by the county treasurer and shall:

- (a) Describe the property;
 - (b) Recite facts which establish eligibility for deferral under the provisions of this article;
 - (c) List all mortgages and deeds of trust which constitute liens upon the property, together with the book and page number of the county records at which each is recorded and the date of recordation;
 - (d) List all mortgages which constitute liens upon a mobile home, together with the street address and county where the record of any such mortgage is on file with the authorized agent for the department of revenue;
 - (d.5) On or after January 1, 2006, list the actual value of the property based on the most recent appraisal by the county assessor;
 - (e) Demonstrate that the cumulative value of the deferral plus the interest accrued on the deferral does not exceed the market value of the property less the value of all mortgages which constitute liens upon the property and any other liens upon the property filed prior to the date of recordation of the certificate for deferral.
- (2) The form prescribed by the state treasurer shall contain a statement, in bold-faced type, that states substantially as follows:

**IMPORTANT NOTICE TO PROPERTY OWNER: YOU COULD LOSE
YOUR PROPERTY IF THE CUMULATIVE AMOUNT OF THE DEFER-
RAL PLUS INTEREST EXCEEDS THE MARKET VALUE OF YOUR
PROPERTY LESS THE VALUE OF ANY LIENS.**

Source: **L. 78:** Entire article added, p. 472, § 1, effective February 28, 1979. **L. 79:** Entire section R&RE, p. 1412, § 3, effective January 1, 1980. **L. 88:** (1)(d), (1)(e), and (2) added, p. 1284, §§ 12, 11, effective January 1, 1989. **L. 2005:** (1)(d.5) added, p. 878, § 2, effective June 1.

39-3.5-105. Listing of tax-deferred property - tax as lien - interest accrual. (1) If eligibility for deferral of homestead property is established as provided in this article, the county treasurer shall:

- (a) Enter in his records a notation that the property is tax-deferred;
- (b) (I) Promptly, upon designation of the property as tax-deferred, issue a certificate of deferral, which shall include the name of the taxpayer, the description of the property, the amount of tax deferred, and the year for which the deferral was granted. The certificate shall be recorded in the county records and thereafter sent to the state treasurer. One copy shall be given to the assessor, and one copy shall be retained in the county treasurer's office.
- (II) Promptly, upon designation of a mobile home as tax-deferred, the owner of the mobile home shall surrender title to the property to the county clerk and recorder. The county clerk and recorder shall, pursuant to the provisions of article 29 of title 38, C.R.S., make application with the department of revenue for issuance of a new certificate of title with a record of the lien of the state treasurer. This procedure shall be followed for each subsequent year that the property is deferred. The county treasurer shall issue a certificate of deferral, which shall include the name of the taxpayer, the description of the property, the amount deferred, and the tax year for which the deferral was granted, and shall send such certificate to the state treasurer. One copy shall be given to the county assessor, and one

copy shall be retained in the county treasurer's office. Upon satisfaction of said lien, the state treasurer shall release the lien from said title.

(2) Notwithstanding the requirements of section 39-1-119 (1), if a person holding escrow funds for the payment of ad valorem taxes receives a copy of the certificate of deferral relating to any tax-deferred property, he shall, no later than thirty days after receiving said certificate, refund to the owner of said property all funds held in escrow for the payment of ad valorem taxes on said property which have been deferred.

(3) Until otherwise required by this article, the county treasurer shall, in subsequent years, continue to list the property as tax-deferred in the manner provided in subsection (1) of this section.

(4) (a) The lien for deferred taxes and interest shall attach on the date of recordation of the certificate for deferral, shall be junior to any mortgage or deed of trust recorded prior to the date of recording of such certificate, shall have priority over all liens attaching subsequent to the date of recording of such certificate, and shall not be foreclosed except as provided in sections 39-3.5-110 to 39-3.5-112.

(b) The lien for deferred taxes and interest for 1978 deferred taxes shall attach on the date of recordation of the certificate of deferral, shall be junior to any mortgage or deed of trust recorded prior to the date of recording of such certificate, shall have priority over all liens attaching subsequent to the date of recording of such certificate, and shall not be foreclosed except as provided in sections 39-3.5-110 to 39-3.5-112.

(5) (a) Repealed.

(b) On and after May 1, 1999, interest shall accrue on all taxes deferred pursuant to deferrals claimed prior to the 1999 calendar year at the rate of seven percent per annum until the date on which such taxes are paid. Interest shall accrue on all taxes deferred pursuant to deferrals claimed on and after January 1, 1999, but prior to January 1, 2001, at the rate of seven percent per annum, beginning May 1 of the calendar year in which the deferral is claimed, until the date on which such taxes are paid.

(c) Interest shall accrue on all taxes deferred pursuant to all deferrals claimed on and after January 1, 2001, at a rate equivalent to the rate per annum on the most recently issued ten-year United States treasury note, rounded to the nearest one-tenth of one percent, as reported by the "Wall Street Journal", as of February 1 of the calendar year in which such deferral is claimed. Interest shall accrue on taxes deferred at the rate specified in this paragraph beginning May 1 of the calendar year in which the deferral is claimed until the date on which such taxes are paid.

Source: **L. 78:** Entire article added, p. 473, § 1, effective February 28, 1979. **L. 79:** Entire section R&RE, p. 1412, § 4, effective January 1, 1980. **L. 88:** (1)(b) amended, p. 1284, § 13, effective January 1, 1989. **L. 98:** (5) amended, p. 679, § 1, effective August 5. **L. 2000:** (5)(b) amended and (5)(c) added, p. 905, § 1, effective May 25.

Editor's note: Subsection (5)(a)(II) provided for the repeal of subsection (5)(a), effective May 1, 1999. (See L. 98, p. 679.)

39-3.5-105.5. Loan of state moneys to taxpayers. (1) Upon approval by the state treasurer of a taxpayer's application to participate in the property tax deferral program, the state treasurer shall make a loan to the taxpayer in the amount certified as deferred in the taxpayer's certificate of deferral. The loan shall be disbursed to a county treasurer on behalf of the taxpayer pursuant to section 39-3.5-106 and shall be made from the moneys on deposit in the state treasury that are not immediately required to be disbursed.

(2) Interest on a loan for property tax deferral shall accrue at the rate specified in section 39-3.5-105 (5). The interest shall accrue beginning April 30 of the calendar year in which the deferral is claimed until the date on which such loan is repaid.

Source: **L. 2002:** Entire section added, p. 637, § 1, effective July 1.

39-3.5-105.7. Prior deferrals to be treated as loans. All deferred real property tax paid by the state treasurer to a county treasurer prior to July 1, 2002, shall be reclassified

as an investment in a loan to a taxpayer that was disbursed to a county treasurer on behalf of the taxpayer, and all provisions of this article shall apply to the loan.

Source: L. 2002: Entire section added, p. 637, § 1, effective July 1.

39-3.5-106. State treasurer to pay county treasurer an amount equivalent to deferred taxes. (1) Pursuant to section 39-3.5-105.5, the state treasurer shall loan the amount certified as deferred in the certificate of deferral to a taxpayer deferring property taxes under this article. By April 30, 2003, and by each April 30 thereafter, the state treasurer shall pay the amount of each taxpayer's loan to the county treasurer in which the taxpayer's homestead property is located. The total amount paid by the state treasurer shall be distributed by the county treasurer in the same manner the tax would have been if regularly paid.

(2) The state treasurer shall maintain an account for each tax-deferred property and shall accrue interest, beginning May 1 of the calendar year in which the deferral was claimed, on the amount certified as deferred in the certificate of deferral. The state treasurer shall insure that each account for tax-deferred property complies with this article.

Source: L. 78: Entire article added, p. 474, § 1, effective February 28, 1979. **L. 79:** (2) R&RE, p. 1413, § 5, effective January 1, 1980. **L. 88:** (2) amended, p. 1285, § 14, effective January 1, 1989. **L. 91:** (1) and (2) amended, p. 1952, § 1, effective January 1, 1992. **L. 2002:** (1) amended, p. 638, § 2, effective July 1.

39-3.5-107. Repayment of loans - release of liens - disposition of payments. (1) On and after the date of payment by the state treasurer to the county treasurer as provided in section 39-3.5-106, the right to receive repayment of a loan for deferred taxes and to enforce the lien created by deferral shall be vested in the state treasurer.

(2) If repayment of a loan for deferred taxes is tendered to the county treasurer, he or she shall accept payment, give a receipt therefor, and forthwith transmit the money collected to the state treasurer.

(3) Promptly upon receiving repayment of a loan for deferred taxes, the state treasurer shall issue a release of the deferred tax lien, which release shall be given or sent to the person making payment. Copies of the release shall be sent to the treasurer and the assessor.

(4) All interest received in payment for a loan for deferred taxes shall be credited to the general fund by the state treasurer.

Source: L. 78: Entire article added, p. 474, § 1, effective February 28, 1979. **L. 2002:** Entire section amended, p. 638, § 3, effective July 1.

39-3.5-108. Notice to taxpayer regarding duty to claim deferral annually. At the time the treasurer sends the annual real property tax notice to any taxpayer who has claimed a deferral of property taxes in the previous calendar year, he shall enclose a deferral notice. The deferral notice shall be substantially in the following form:

To: (name of taxpayer)

If you want to defer the collection of ad valorem property taxes on your homestead for the assessment year ending on December 31, ____, you must file a claim for deferral not later than April 1, ____, in the office of the county treasurer. Forms for filing such claims are available at the county treasurer's office.

If you fail to file your claim for deferral on or before April 1, ____, your real property taxes will be due and payable in accordance with the schedule set out in the enclosed tax notice.

If you change your permanent address at any time during the assessment year ending on December 31, ____, you must notify the county assessor promptly.

Source: L. 78: Entire article added, p. 474, § 1, effective February 28, 1979.

39-3.5-109. Failure to receive notices. Failure to receive the notice provided for in this article is not a defense in any proceeding for the collection of taxes or for the foreclosure of a tax lien. The treasurer is not personally liable for failure to give such notices.

Source: L. 78: Entire article added, p. 475, § 1, effective February 28, 1979.

39-3.5-110. Events requiring repayment of loans - notice to state treasurer.

(1) All loans for deferred real property taxes, including accrued interest, shall become payable subject to sections 39-3.5-111 and 39-3.5-112 when:

- (a) The taxpayer who claimed the tax deferral dies;
 - (b) The property on which the taxes were deferred is sold or becomes subject to a contract of sale, or title to the property is transferred to someone other than the taxpayer who claimed the tax deferral;
 - (c) The property is no longer the homestead of the taxpayer who claimed the deferral, except in the case of a taxpayer required to be absent from such tax-deferred property by reason of ill health;
 - (d) The tax-deferred property no longer meets the requirements of section 39-3.5-103 (1) (c) or (1) (f);
 - (e) The location of the tax-deferred mobile home has changed either within the county or to another county.
- (2) When the assessor or treasurer has reason to believe any of the circumstances enumerated in this section has occurred, he shall promptly notify the state treasurer.

Source: L. 78: Entire article added, p. 475, § 1, effective February 28, 1979. **L. 79:** (1)(d) amended, p. 1413, § 6, effective January 1, 1980. **L. 88:** (1)(d) amended and (1)(e) added, p. 1285, § 15, effective January 1, 1989. **L. 2002:** IP(1) amended, p. 638, § 4, effective July 1.

39-3.5-111. Time for payment - delinquencies. (1) Whenever any of the circumstances listed in section 39-3.5-110 occurs:

- (a) No further tax deferrals may be claimed on the property until all loans for unpaid taxes, including previously deferred taxes and interest, have been paid.
- (b) All loans for deferred taxes and accrued interest shall be due and payable ninety days after the circumstance occurs, except as provided in subsection (2) of this section and in section 39-3.5-112.
- (2) Any provision of this section to the contrary notwithstanding, when the taxpayer dies a loan for deferred taxes and accrued interest shall be due and payable one year after the taxpayer's death.
- (3) If a loan for deferred taxes and accrued interest is not paid on the due date, such amounts are delinquent as of that date, and the state treasurer shall foreclose the deferred tax lien.
- (4) Foreclosure by the state treasurer of deferred tax liens shall be in the same manner as provided by law for the foreclosure of judgment liens. At the foreclosure sale, the state treasurer or his representative shall bid on behalf of the state of Colorado the amount of the deferred tax lien.
- (5) If the owner of the tax-deferred property elects to do so, he or she may convey the property to the state of Colorado in lieu of paying a loan for deferred taxes and accrued interest. Upon completion of such conveyance, all deferred tax liens upon the property shall be extinguished, and all liability for payment of a loan for deferred taxes and accrued interest shall be released.
- (6) The lien for deferred taxes shall be subject to and may be extinguished in a proper foreclosure of a mortgage or deed of trust recorded prior to the date of recording of the certificate of tax deferral. In any such foreclosure, any notice that is required to be sent to the state by reason of the state's holding of a lien for deferred taxes shall be sent to the state

treasurer. All other procedural matters for such foreclosure, including notice and time limits, shall be as provided in the law pursuant to which the foreclosure is brought.

(7) Whenever the state forecloses a lien for deferred taxes, the interest in the property obtained thereby shall be subject to foreclosure proceedings by the holder of a mortgage or deed of trust recorded prior to the date of recording of the certificate of tax deferral.

Source: L. 78: Entire article added, p. 475, § 1, effective February 28, 1979. **L. 79:** (4) amended and (6) and (7) added, p. 1666, § 139, effective July 19; (1)(b) amended and (5) added, p. 1413, § 7, effective January 1, 1980. **L. 2002:** (1), (2), (3), and (5) amended, p. 638, § 5, effective July 1.

39-3.5-112. Election by spouse to continue tax deferral. (1) Notwithstanding the provisions of section 39-3.5-110, when one of the circumstances listed in section 39-3.5-110 (1) (a) or (1) (c) occurs, the spouse of the taxpayer may elect to continue the property in its tax-deferred status if:

(a) The spouse of the taxpayer is or will be sixty years of age or older when the circumstance occurs; and

(b) The property is the homestead of the spouse of the taxpayer and meets the requirements of section 39-3.5-103 (1) (b) and (1) (c).

(1.5) (a) Notwithstanding the provisions of section 39-3.5-110 (1) (a), when a taxpayer who claimed a tax deferral pursuant to this article dies, the loan for deferred real property taxes, including accrued interest, shall not become payable if:

(I) The taxpayer was a person called into military service;

(II) The taxpayer is survived by a spouse; and

(III) The property is the homestead of the surviving spouse and meets the requirements of section 39-3.5-103 (1) (b) and (1) (c).

(b) If paragraph (a) of this subsection (1.5) applies, a loan for deferred real property taxes, including accrued interest, shall become payable when the spouse of the taxpayer dies, in addition to the events set forth in section 39-3.5-110.

(2) The election granted under subsection (1) of this section shall be filed in the same manner as a claim for deferral is filed under section 39-3.5-102, not later than ninety days from the date the circumstance occurs. Thereafter, the property shall continue to be treated as tax-deferred property, and the county treasurer and state treasurer shall withdraw any action taken under section 39-3.5-111. When the property has been continued in its tax-deferred status by the spouse of the taxpayer, the spouse may continue the property in its tax-deferred status in subsequent years by filing a claim, as provided in section 39-3.5-104, annually if the property continues to be eligible for tax-deferred status.

Source: L. 78: Entire article added, p. 475, § 1, effective February 28, 1979. **L. 79:** IP(1) and (2) amended, p. 1414, § 8, effective January 1, 1980. **L. 2005:** (1.5) added, p. 878, § 3, effective June 1.

39-3.5-113. Voluntary repayment of loans for deferred tax. (1) Subject to subsection (2) of this section, all or part of a loan for deferred taxes and accrued interest may, at any time, be paid by the taxpayer, his or her spouse, guardian, conservator, attorney-in-fact, personal representative, next of kin, heir-at-law, or child, or any person having or claiming a legal or equitable interest in the property. If the deferred tax lien is paid, in whole or in part, by a mortgagee or the beneficiary of a deed of trust or seller under contract, the amount paid may be added to the unpaid balance of the mortgage or deed of trust but shall be added to the last payment due under said mortgage or deed of trust or contract, without amortization.

(2) Any payment made under this section shall be applied first to accrued interest and then to a loan for deferred taxes. Such payment does not affect the deferred tax status of the property. Voluntary payment does not give the person paying the taxes any interest in the property.

Source: L. 78: Entire article added, p. 476, § 1, effective February 28, 1979. L. 2002: Entire section amended, p. 639, § 6, effective July 1.

39-3.5-114. Deferred tax certificates not to be included in reserve or surplus. (Repealed)

Source: L. 78: Entire article added, p. 476, § 1, effective February 28, 1979. L. 2002: Entire section repealed, p. 639, § 7, effective July 1.

39-3.5-115. Limitations on effect of article. Nothing in this article is intended to or shall be construed to prevent the collection, by foreclosure or otherwise, of personal property or other taxes which become a lien against tax-deferred property.

Source: L. 78: Entire article added, p. 476, § 1, effective February 28, 1979.

39-3.5-116. Deed or contract clauses preventing application for deferral prohibited - clauses void. (Repealed)

Source: L. 78: Entire article added, p. 476, § 1, effective February 28, 1979. L. 79: Entire section repealed, p. 1414, § 11, effective January 1, 1980.

39-3.5-117. Report. (Repealed)

Source: L. 78: Entire article added, p. 477, § 1, effective February 28, 1979. L. 79: Entire section amended, p. 1414, § 9, effective January 1, 1980. L. 88: Entire section amended, p. 1308, § 2, effective May 29. L. 92: Entire section amended, p. 2182, § 53, effective June 2. L. 2002: Entire section repealed, p. 862, § 4, effective August 7.

39-3.5-118. Emergency property tax deferral for depositors of troubled industrial banks. (Repealed)

Source: L. 88: Entire section added, p. 1307, § 1, effective May 29.

Editor's note: Subsection (7) provided for the repeal of this section, effective June 30, 1990. (See L. 88, p. 1307.)

39-3.5-119. Release of information identifying individuals claiming deferral. (1) Notwithstanding the provisions of part 2 of article 72 of title 24, C.R.S., or any other provision of law to the contrary, county treasurers and the state treasurer shall deny requests from individuals, corporations, or other private entities to inspect or produce the names, addresses, phone numbers, social security numbers, or other information identifying individuals who claim deferrals pursuant to this article.

(2) Nothing in this section shall be construed to prohibit individuals from examining records recorded in county records by the county clerk and recorder nor shall it be construed to prohibit the disclosure of information:

- (a) Required in connection with granting or denying a claim for deferral;
- (b) Required in connection with an administrative, judicial, or other legal proceeding;
- (c) Required in connection with the conveyance, sale, or encumbrance of a specific property;
- (d) When the information is contained in a statistical compilation or other informational summary that does not disclose individual identifying information; or
- (e) When the individual claiming the exemption has agreed to the disclosure.

Source: L. 2001: Entire section added, p. 296, § 1, effective August 8.

ARTICLE 3.7**Property Tax Work-off Program for the Elderly**

- 39-3.7-101. Definitions.
39-3.7-102. Property tax work-off program - creation - terms.

39-3.7-101. Definitions. As used in this article, unless the context otherwise requires:

(1) "Homestead" means the owner-occupied residence of the taxpayer and includes owner-occupied units in a condominium, townhouse, or similar structure.

(1.5) "Person with a disability" means any individual with a physical impairment, a developmental disability as defined in section 27-10.5-102 (11) (a), C.R.S., or mental retardation that substantially limits one or more of the major life activities of the individual.

(2) "Property tax work-off program" means any program established pursuant to the provisions of this article.

(3) "Real property taxes" means all ad valorem taxes levied on a homestead, including special assessments and all other charges which are recoverable, by law, at the annual real estate tax sale.

(4) "Taxing entity" means any county, city and county, city, town, school district, or special district within the state of Colorado.

Source: L. 91: Entire article added, p. 1995, § 1, effective April 11. **L. 2003:** (1.5) added, p. 841, § 1, effective August 6.

39-3.7-102. Property tax work-off program - creation - terms. (1) Any taxing entity that levies and collects real property taxes may establish a property tax work-off program in accordance with the provisions of this article that allows any taxpayer who is sixty years of age or older or who is a person with a disability to perform work for the taxing entity in lieu of the payment of any real property taxes, or any portion thereof, due and owing on the homestead of such taxpayer for any given property tax year.

(2) In order to qualify for participation in any property tax work-off program created pursuant to the provisions of this article, the following requirements shall be satisfied at the time the application is filed and so long thereafter as the taxpayer may participate in such property tax work-off program:

(a) The property on which the property taxes are due and owing is the homestead of the taxpayer making application.

(b) The taxpayer making application must, singly or jointly with another person residing in the homestead, own the fee simple estate or be purchasing the fee simple estate under a recorded instrument of sale; except that nonresidence of the joint owner in the homestead because of ill health of the joint owner shall not prevent the taxpayer from meeting the requirements of this paragraph (b).

(c) The property on which the property taxes are due and owing is not income-producing.

(3) The number of hours of work to be performed by a taxpayer pursuant to any property tax work-off program shall be based upon the calculation of the amount of property taxes, or portion thereof, to be worked off divided by the minimum wage as set by federal law.

(4) A property tax work-off program shall be created upon the adoption of a resolution or ordinance, whichever is appropriate, by the governing body of such taxing entity. Such resolution or ordinance shall be in accordance with the provisions of this article and shall include, but shall not be limited to, the following: Procedures for application for participation in such property tax work-off program; the maximum number of taxpayers allowed to participate in such property tax work-off program; procedures for verification of work performed; procedures for the issuance of checks to taxpayers for the amount of property tax worked off by such taxpayers pursuant to such property tax work-off program; and such

other provisions which such taxing entity deems reasonable and necessary for the implementation and operation of such property tax work-off program.

(4.5) For each property tax year in which a taxpayer participates in a property tax work-off program pursuant to the provisions of this section, the taxing entity which has established such program shall issue a check or checks to such taxpayer which shall be made payable only to the appropriate county treasurer. The taxpayer shall be responsible for the delivery of the check or checks to the county treasurer in order for such amount to be credited to the property tax which is due and owing on the homestead of the taxpayer for such property tax year.

(5) Any taxing entity which establishes a property tax work-off program pursuant to the provisions of this article shall make information regarding such program available to the taxpayers of the taxing entity.

(6) Any taxpayer who is a person with a disability and who applies to participate in a property tax work-off program pursuant to this article shall, upon application, submit a signed and dated letter from a Colorado licensed health care professional verifying that the taxpayer is a person with a disability. Any taxing entity that establishes a property tax work-off program pursuant to the provisions of this section shall have the authority to further define the term "person with a disability" for purposes of determining eligibility for the property tax work-off program. The definition may restrict, but shall not expand, the class of individuals who are eligible to participate in the property tax work-off program pursuant to this section.

Source: **L. 91:** Entire article added, p. 1995, § 1, effective April 11. **L. 92:** (4) amended and (4.5) added, p. 2242, § 1, effective March 16. **L. 2003:** (1) amended and (6) added, p. 841, § 2, effective August 6.

ARTICLE 3.9

Optional Nongaming Property Tax Deferral Plan

39-3.9-101 to 39-3.9-106. (Repealed)

Editor’s note: (1) This article was added in 1993 and was not amended prior to its repeal in 1996. For the text of this article prior to 1996, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

(2) Section 39-3.9-106 provided for the repeal of this article, effective December 31, 1996. (See L. 93, p. 346.)

Valuation and Taxation

ARTICLE 4

Valuation of Public Utilities

Editor’s note: This article was repealed and reenacted in 1964. For historical information concerning the repeal and reenactment, see the editor’s note before the article 1 heading.

39-4-101.	Definitions.	39-4-107.	tionment.
39-4-102.	Valuation of public utilities.	39-4-107.	Statement of valuation to
39-4-103.	Schedules of property - confi-	39-4-108.	counties.
	dential records - late filing	39-4-109.	Complaint - hearing - deci-
	penalties.	39-4-110.	sion.
39-4-104.	Inspection of records of util-		Judicial review.
	ity.		Certification and assessment
39-4-105.	Production of records.		of pollution control prop-
39-4-106.	Valuation of utilities - appor-		erty. (Repealed)

39-4-101. Definitions. As used in this article, unless the context otherwise requires:

(1) “Aircraft” means any contrivance now known or hereafter invented, used, or designed for navigation or flight through the air and designed to carry at least one person.

(2) “Airline company” means any operator who engages in the carriage by aircraft of persons or property as a common carrier for compensation or hire, or the carriage of mail, or any aircraft operator who operates regularly between two or more points and publishes a flight schedule. “Airline company” shall not include operators whose aircraft are all certified for a gross takeoff weight of twelve thousand five hundred pounds or less and who do not engage in scheduled or mail carriage service.

(2.3) “Biomass energy facility” means a new facility first placed in production on or after January 1, 2010, that uses real and personal property, including leaseholds and easements, to generate and deliver to the interconnection meter any source of electrical or mechanical energy by combusting only biomass or biosolids derived from the treatment of wastewater and that is not primarily designed to supply electricity for consumption on site.

(2.4) “Geothermal energy facility” means a new facility first placed in production on or after January 1, 2010, that uses real and personal property, including but not limited to leaseholds and easements, to generate and deliver to the interconnection meter any source of electrical or mechanical energy by harnessing the heat energy of groundwater or the ground and that is not primarily designed to supply electricity for consumption on site.

(2.5) Repealed.

(3) (a) “Public utility” means, for property tax years commencing on or after January 1, 1987, every sole proprietorship, firm, limited liability company, partnership, association, company, or corporation, and the trustees or receivers thereof, whether elected or appointed, that does business in this state as a railroad company, airline company, electric company, small or low impact hydroelectric energy facility, geothermal energy facility, biomass energy facility, wind energy facility, solar energy facility, rural electric company, telephone company, telegraph company, gas company, gas pipeline carrier company, domestic water company selling at retail except nonprofit domestic water companies, pipeline company, coal slurry pipeline, or private car line company.

(b) On and after January 1, 2010, for purposes of this article, “public utility” shall not include any affiliate or subsidiary of a sole proprietorship, firm, limited liability company, partnership, association, company, or corporation of any type of company described in paragraph (a) of this subsection (3) that is not doing business in the state primarily as a railroad company, airline company, electric company, small or low impact hydroelectric energy facility, geothermal energy facility, biomass energy facility, wind energy facility, solar energy facility, rural electric company, telephone company, telegraph company, gas company, gas pipeline carrier company, domestic water company selling at retail except nonprofit domestic water companies, pipeline company, coal slurry pipeline, or private car line company. Valuation and taxation of any such affiliate or subsidiary of a public utility as defined in paragraph (a) of this subsection (3) shall be assessed pursuant to article 5 of this title.

(3.3) (a) “Small or low impact hydroelectric energy facility” means a new facility first placed in production on or after January 1, 2010, that uses real and personal property, including but not limited to leaseholds and easements, to generate and deliver to the interconnection meter any source of electrical or mechanical energy by harnessing the kinetic energy of water, that is not primarily designed to supply electricity for consumption on site, and that is:

(I) A new facility that is a small facility that has a nameplate rating of ten megawatts or less; or

(II) A new facility that has a nameplate rating of more than ten megawatts and that:

(A) Is an addition to water infrastructure such as a reservoir, a ditch, or a pipeline that existed before January 1, 2010;

(B) Does not result in any change in the quantity or timing of diversions or releases for purposes of peak power generation;

(C) Includes measures to prevent fish mortality in facilities on on-stream reservoirs and natural waterways; and

(D) Does not cause any violation of state water quality standards when operated; or

(III) A new facility that has a nameplate rating of more than ten megawatts and that:

(A) Is placed into production as part of new water infrastructure such as a reservoir, a ditch, or a pipeline constructed on or after January 1, 2010, and operated for primary beneficial uses of water other than solely for production of electricity;

(B) Includes measures to prevent fish mortality in facilities on reservoirs and natural waterways; and

(C) Does not cause any violation of state water quality standards when operated.

(b) For purposes of this subsection (3.3), “new facility” includes a combined facility that is a combination of a facility placed in production before January 1, 2010, that uses real and personal property to generate and deliver to the interconnection meter any source of electric or mechanical energy by harnessing the kinetic energy of water and that is not primarily designed to supply energy for consumption on site and an addition or energy efficiency improvement to the facility first placed in production on or after January 1, 2010, if the addition or efficiency improvement increases the electrical or mechanical energy-producing capacity of the combined facility by at least twenty-five percent over the capacity of the facility placed in production before January 1, 2010, alone.

(3.5) “Solar energy facility” means a new facility first placed in production on or after January 1, 2009, that uses real and personal property, including but not limited to one or more solar energy devices, as defined in section 38-32.5-100.3 (2), C.R.S., leaseholds, and easements, to generate and deliver to the interconnection meter any source of electrical, thermal, or mechanical energy in excess of two megawatts by harnessing the radiant energy of the sun and that is not primarily designed to supply electricity for consumption on site.

(4) “Wind energy facility” means a new facility first placed in production on or after January 1, 2006, that uses property, real and personal, including one or more wind turbines, leaseholds, and easements, to generate and deliver to the interconnection meter any source of electrical or mechanical energy in excess of two megawatts by harnessing the kinetic energy of the wind.

Source: **L. 64:** R&RE, p. 688, § 1. **C.R.S. 1963:** § 137-4-1. **L. 76:** Entire section amended, p. 768, § 1, effective April 26; entire section amended, p. 759, § 16, effective July 1, 1977. **L. 81:** (2.5) added and (3) amended, p. 1854, §§ 3, 4, effective January 1, 1982; (3) amended, p. 1847, § 1, effective January 1, 1982. **L. 82:** (2.5) amended, p. 628, § 41, effective April 2. **L. 83:** (2.5) and (3) amended, p. 1496, § 3, effective April 28. **L. 84:** (2.5) and (3) amended, p. 989, § 2, effective February 23; (2.5) and (3) amended, p. 997, § 2, effective May 22. **L. 90:** (3) amended, p. 450, § 27, effective April 18. **L. 2000:** (3) amended, p. 1738, § 2, effective June 1. **L. 2006:** (3) amended and (4) added, p. 889, § 1, effective May 9. **L. 2008:** (4) amended, p. 1319, § 2, effective May 27. **L. 2009:** (3) amended and (3.5) added, (SB 09-177), ch. 186, p. 812, § 1, effective April 22. **L. 2010:** (3) amended and (3.3) added, (SB 10-019), ch. 382, p. 1784, § 1, effective June 8; (2.3) added and (3) amended, (SB 10-177), ch. 392, p. 1862, § 3, effective August 11; (2.4) added and (3) amended, (SB 10-174), ch. 189, p. 813, § 8, effective August 11.

Editor’s note: (1) Subsection (2.5) provided for the repeal of subsection (2.5), effective January 1, 1987. (See L. 84, p. 989.)

(2) Amendments to this section by House Bill 76-1235 and House Bill 76-1025 were harmonized. Amendments to subsection (3) by House Bill 81-1309 and Senate Bill 81-025 were harmonized. Amendments to subsections (2.5) and (3) by House Bill 84-1051 and Senate Bill 84-214 were harmonized. Amendments to subsection (3) by Senate Bill 10-019, Senate Bill 10-174, and Senate Bill 10-177 were harmonized.

Cross references: For the legislative intent contained in the 2008 act amending subsection (4), see section 9 of chapter 302, Session Laws of Colorado 2008.

ANNOTATION

Since the general assembly failed to define “telephone company” as used in the definition of “public utility” in this section, it must be

assumed that the general assembly intended to give the term its usual and ordinary meaning. *Transponder Corp. of Denver v. Propty. Tax*

Adm'r, 681 P.2d 499 (Colo. 1984); U.S. Transmission Sys. v. Bd. of Assmt. Appeals, 715 P.2d 1249 (Colo. 1986).

Because the company directly facilities two-way communication between a significant number of unrelated persons or businesses, the company is a "telephone company". U.S. Transmission Sys. v. Bd. of Assmt. Appeals, 715 P.2d 1249 (Colo. 1986).

"Public utilities". There is no evidence that the general assembly intended to limit its definition of "public utility" for property tax purposes to those companies that are regulated monopolies. U.S. Transmission Sys. v. Bd. of Assmt. Appeals, 715 P.2d 1249 (Colo. 1986).

Because the petitioner was doing business as a "telephone company" within the state of Colorado it was a public utility subject to unitary valuation for property tax assessment. U.S. Transmission Sys. v. Bd. of Assmt. Appeals, 715 P.2d 1249 (Colo. 1986).

A nonfacilities-based reseller of long distance telephone services is a telephone company within the meaning of subsection (3)(a). OPEX Commc'ns, Inc. v. Prop. Tax Adm'r, 166 P.3d 225 (Colo. App. 2007).

Applied in State Pers. Bd. v. District Court, 637 P.2d 333 (Colo. App. 1981).

39-4-102. Valuation of public utilities. (1) The administrator shall determine the actual value of the operating property and plant of each public utility as a unit, giving consideration to the following factors and assigning such weight to each of such factors as in the administrator's judgment will secure a just value of such public utility as a unit:

(a) The tangible property comprising its plant, whether the same is situated within this state or both within and without this state, exclusive of any tangible property situated without this state which is not directly connected with the business in which such public utility is engaged within this state;

(b) Its intangibles, such as special privileges, franchises, contract rights and obligations, and rights-of-way; except that licenses granted by the federal communications commission to a wireless carrier, as defined in section 29-11-101, C.R.S., shall not be considered, nor shall the value of such licenses be reflected, in the administrator's valuation of the carrier's tangible property;

(c) Its gross and net operating revenues during a reasonable period of time not to exceed the most recent five-year period, capitalized at indicative rates;

(d) The average market value of its outstanding securities during the preceding calendar year, if such market value is determinable;

(e) (I) When determining the actual value of a renewable energy facility that primarily produces more than two megawatts of alternating current electricity, the administrator shall:

(A) Consider the additional incremental cost per kilowatt of the construction of the renewable energy facility over that of the construction cost of a comparable nonrenewable energy facility, inclusive of the cost of all property required to generate and deliver energy to the interconnection meter, that primarily produces alternating current electricity to be an investment cost and shall not include such additional incremental cost in the valuation of the facility; and

(B) Not add value to a renewable energy facility for any renewable energy credits created by the production of alternating current electricity.

(II) For purposes of this paragraph (e), "renewable energy" has the meaning provided in section 40-1-102 (11), C.R.S., but shall not include energy generated from a small or low impact hydroelectric energy facility, a geothermal energy facility, a biomass energy facility, a wind energy facility, or a solar energy facility.

(III) (A) For purposes of determining the actual value of a renewable energy facility as specified in subparagraph (I) of this paragraph (e), an owner or operator of a facility shall provide a copy of the facility's current power purchase agreement to the administrator by April 1 of each assessment year as an attachment to the statement required as specified in section 39-4-103 (1); except that, if a copy of the current power purchase agreement was previously provided either by the owner or operator or by the purchaser of power and there is no material change in the facility's current power purchase agreement, the owner or operator of a facility shall not be required to provide a copy of the agreement.

(B) If the owner or operator of a facility does not provide a copy of the facility's current power purchase agreement as specified in sub-subparagraph (A) of this subparagraph (III), the administrator shall have the authority to request a copy of the current power purchase

agreement from the purchaser of power generated at the facility; except that, if a copy of the current power purchase agreement was previously provided either by the owner or operator or by the purchaser of power and there is no material change in the facility's current power purchase agreement, the purchaser of power shall not be required to provide a copy of the agreement.

(C) All power purchase agreements provided to the administrator pursuant to this subparagraph (III) shall be considered private documents and shall be available only to the administrator and the employees of the division of property taxation in the department of local affairs.

(1.5) The administrator shall determine the actual value of a small or low impact hydroelectric energy facility, a geothermal energy facility, a biomass energy facility, a wind energy facility, or a solar energy facility as follows:

(a) The general assembly hereby declares that consideration by the administrator of the cost approach and market approach to the appraisal of a wind energy facility or a solar energy facility results in valuations that are neither uniform nor just and equal because of wide variations in the production of energy from wind turbines and solar energy devices, as defined in section 38-32.5-100.3 (2), C.R.S., because of the uncertainty of wind and sunlight available for energy production, and because constructing a wind energy facility or a solar energy facility is significantly more expensive than constructing any other utility production facility. The general assembly further declares that it is also appropriate to value small or low impact hydroelectric energy facilities, geothermal energy facilities, and biomass energy facilities, which also have high construction costs relative to their ongoing operational costs, using the income approach. Therefore, in the absence of preponderant evidence shown by the administrator that the use of the cost approach and market approach results in uniform and just and equal valuation, a small or low impact hydroelectric energy facility, a geothermal energy facility, a biomass energy facility, a wind energy facility, or a solar energy facility shall be valued based solely upon the income approach.

(b) (I) The actual value of a small or low impact hydroelectric energy facility, a geothermal energy facility, a biomass energy facility, a wind energy facility, or a solar energy facility shall be at an amount equal to a tax factor times the selling price at the interconnection meter.

(II) As used in this article, "interconnection meter" means the meter located at the point of delivery of energy to the purchaser.

(III) As used in this paragraph (b), "selling price at the interconnection meter" means the gross taxable revenues realized by the taxpayer from the sale of energy at the interconnection meter.

(IV) As used in this paragraph (b), "tax factor" means a factor annually established by the administrator. The tax factor shall be a number that when applied to the selling price at the interconnection meter results in approximately the same tax revenue over a twenty-year period on a nominal dollar basis that would have been collected using the cost basis method of taxation as determined by the administrator for a renewable energy facility pursuant to paragraph (e) of subsection (1) of this section. For a renewable energy facility that begins generating energy before January 1, 2012, the administrator shall include only the cost of all property required to generate and deliver renewable energy to the interconnection meter that does not exceed the cost of property required to generate nonrenewable energy. For a renewable energy facility that begins generating energy on or after January 1, 2012, the administrator shall include only the cost of all property required to generate and deliver renewable energy to the interconnection meter that does not exceed the cost of property required to generate and deliver nonrenewable energy to the interconnection meter.

(V) For purposes of calculating the tax factor as required in subparagraph (IV) of this paragraph (b), an owner or operator of a small or low impact hydroelectric energy facility, a geothermal energy facility, a biomass energy facility, a wind energy facility, or a solar energy facility shall provide a copy of the small or low impact hydroelectric energy facility's, geothermal energy facility's, biomass energy facility's, wind energy facility's, or solar energy facility's current power purchase agreement to the administrator by April 1 of each assessment year. The administrator shall also have the authority to request a copy of the current power purchase agreement from the purchaser of power generated at a small or

low impact hydroelectric energy facility, a geothermal energy facility, a biomass energy facility, a wind energy facility, or a solar energy facility. All agreements provided to the administrator pursuant to this subparagraph (V) shall be considered private documents and shall be available only to the administrator and the employees of the division of property taxation in the department of local affairs.

(c) The location of a small or low impact hydroelectric energy facility, a geothermal energy facility, a biomass energy facility, a wind energy facility, or a solar energy facility on real property shall not affect the classification of that real property for purposes of determining the actual value of that real property as provided in section 39-1-103.

(d) Pursuant to section 39-3-118.5, no actual value for any personal property used in a small or low impact hydroelectric energy facility, a geothermal energy facility, a biomass energy facility, a wind energy facility, or a solar energy facility shall be assigned until the personal property is first put into use by the facility. If any item of personal property is used in the facility and is subsequently taken out of service so that no small or low impact hydroelectric energy, geothermal energy, biomass energy, wind energy, or solar energy is produced from that facility for the preceding calendar year, no actual value shall be assigned to that item of more than five percent of the installed cost of the item for that assessment year.

(2) If, in the judgment of the administrator, the books and records of any public utility accurately reflect its tangible property, its intangibles, and its earnings within this state during the most recent five-year period, the administrator may determine from such books and records the actual value of its property and plant within this state and need not determine the entire value of its property and plant both within and without this state.

(3) (a) For property tax years 1982 through 1986, there shall be applied to the actual value of each public utility an equalization factor to adjust the actual value for the current year of assessment as determined by the administrator pursuant to subsections (1) and (2) of this section to the public utility's level of value in 1981.

(b) For property tax years commencing on or after January 1, 1987, there shall be applied to the actual value of each public utility an equalization factor to adjust the actual value for the current year of assessment as determined by the administrator pursuant to subsections (1) and (2) of this section to the public utility's level of value in the appropriate year that is prescribed in section 39-1-104 (10.2) and that is used to determine the actual value of properties that are subject to said applicable subsection.

(c) Appraisal procedures, instructions, and factors utilized by the administrator in carrying out the provisions of this section shall be subject to legislative review, the same as rules and regulations, pursuant to section 24-4-103 (8) (d), C.R.S.

(d) The administrator shall certify to the public utility any difference in valuation resulting from the application of this section. Said certification shall be part of the evidence presented in determining rate structures by any applicable rate-setting body.

Source: L. 64: R&RE, p. 688, § 1. C.R.S. 1963: § 137-4-2. L. 67: p. 948, § 12. L. 70: p. 382, § 15. L. 81: (3) added, p. 1847, § 2, effective January 1, 1982. L. 83: (3)(a) and (3)(b) amended, p. 1496, § 4, effective April 28. L. 84: (3)(a) and (3)(b) amended, p. 989, § 3, effective February 23. L. 91: (3)(b) amended, p. 2005, § 4, effective June 6. L. 95: (3)(b) amended, p. 8, § 3, effective March 9. L. 98: (1)(b) amended, p. 1267, § 1, effective June 1. L. 2001: IP(1) amended and (1)(e) added, p. 1523, § 1, effective August 8. L. 2004: (1)(b) amended, p. 1208, § 87, effective August 4. L. 2006: (1)(e) amended and (1.5) added, p. 890, § 2, effective May 9. L. 2008: (1)(e) and (1.5)(b)(V) amended, p. 1319, § 3, effective May 27; (1)(b) amended, p. 685, § 5, effective August 5. L. 2009: (1)(e)(II), IP(1.5), (1.5)(a), (1.5)(b)(I), (1.5)(b)(IV), (1.5)(b)(V), (1.5)(c), and (1.5)(d) amended, (SB 09-177), ch. 186, p. 813, § 2, effective April 22. L. 2010: (1)(e)(II), IP(1.5), (1.5)(a), (1.5)(b)(I), (1.5)(b)(V), (1.5)(c), and (1.5)(d) amended, (SB 10-019), ch. 382, p. 1786, § 2, effective June 8; (1)(e)(I)(A) and (1.5)(b)(IV) amended, (HB 10-1431), ch. 372, p. 1743, § 1, effective August 11; (1)(e)(II), IP(1.5), (1.5)(a), (1.5)(b)(I), (1.5)(b)(V), (1.5)(c), and (1.5)(d) amended, (SB 10-174), ch. 189, p. 814, § 9, effective August 11; (1)(e)(II), IP(1.5), (1.5)(a), (1.5)(b)(I), (1.5)(b)(V), (1.5)(c), and (1.5)(d) amended, (SB 10-177), ch. 392, p. 1862, § 4, effective August 11.

Editor's note: Amendments to subsection (1)(e)(II), the introductory portion to subsection (1.5), and subsections (1.5)(a), (1.5)(b)(I), (1.5)(b)(V), (1.5)(c), and (1.5)(d) by Senate Bill 10-019, Senate Bill 10-174, and Senate Bill 10-177 were harmonized.

Cross references: For the legislative intent contained in the 2008 act amending subsections (1)(e) and (1.5)(b)(V), see section 9 of chapter 302, Session Laws of Colorado 2008.

ANNOTATION

No statutory conflict. The requirement of this section that a public utility's intangibles be considered when valuing such utility's operating property and plant as a unit does not necessarily conflict with the general exemption for intangible personal property pursuant to § 39-3-101 (1)(i). *U.S. Transmission Sys. v. Bd. of Assmt. Appeals*, 715 P.2d 1249 (Colo. 1986) (decided under former law).

Board of assessment appeals was not required, as a matter of law, to include financing costs in the valuation of plaintiff's property. The method by which the property tax administrator arrived at her valuation was authorized under this section. *Colo. Interstate Gas Co. v. Huddleston*, 28 P.3d 958 (Colo. App. 2000).

"Operating property and plant" includes the tangible property comprising the plant and the intangible rights of the utility that directly contribute to the utility's operations. *U.S. Transmission Sys. v. Bd. of Assmt. Appeals*, 715 P.2d 1249 (Colo. 1986).

Property taxation of a public utility in Colorado is not precluded simply because the only portion of the public utility's operating property and plant found within this state is the intangible rights derived from rental of telephone circuits. *U.S. Transmission Sys. v. Bd. of Assmt. Appeals*, 715 P.2d 1249 (Colo. 1986).

Telephone circuits leased by petitioner from other telecommunication companies in Colorado constituted intangible rights held by a public utility as part of its operating property and plant and as such were property considered in determining petitioner's property tax assessment. *U.S. Transmission Sys. v. Bd. of Assmt. Appeals*, 715 P.2d 1249 (Colo. 1986).

Value of the "operating property and plant". The statute reflects the view that the true measure of value of the property of a public utility is its worth as an integrated and operating unit rather than the sum of the values of the various components making up that unit. Therefore, the fact that petitioner's property rights in the circuits leased from other telecommunication companies has no independent market value is not dispositive of such property's assessment value. *U.S. Transmission Sys. v. Bd. of Assmt. Appeals*, 715 P.2d 1249 (Colo. 1986).

The operating property and plant to be valued as a unit consists of the public utility's property and plant used in carrying on its business. Such valuation also includes intangible rights derived from other property and plant even if owned by a parent company or other subsidiary if they contribute directly to the operation of the public utility as an ongoing concern. *United Parcel Serv. of Am., Inc. v. Huddleston*, 981 P.2d 223 (Colo. App. 1999).

The general assembly did not intend to equate "actual value" with "market value". Actual value is not the same as market value and the terms cannot be used interchangeably. *Colo. Interstate Gas Co. v. Huddleston*, 28 P.3d 958 (Colo. App. 2000).

The general assembly's intent is apparent from its use of the term "actual value" when referring to the overall property value, and use of "market value" to refer only to the value of a public utilities outstanding securities during the calendar year preceding valuation. *Colo. Interstate Gas Co. v. Huddleston*, 28 P.3d 958 (Colo. App. 2000).

Applied in Salt River Project v. Bd. of Assmt. Appeals, 719 P.2d 368 (Colo. App. 1986).

39-4-103. Schedules of property - confidential records - late filing penalties.

(1) (a) Except as otherwise provided in this paragraph (a), no later than April 1 of each year, each public utility doing business in this state shall file with the administrator, on a form provided by the administrator, a statement, signed by an officer of such public utility under the penalties of perjury in the second degree, containing such information concerning itself and all of its property, wherever situated, as the administrator may reasonably require for the purpose of determining the actual value of such public utility in this state and for apportioning the valuation for assessment of such public utility among the several counties of this state. Upon good cause shown, the administrator may grant an extension for filing such statement to any public utility. Any extension granted pursuant to this paragraph (a) shall be for a reasonable amount of time as determined by the administrator.

(b) Such statement shall include a specific identification of each and every item of

property owned, leased, or used which is not included in the rendition of the operating property and plant and the county in which each item is located.

(1.5) (a) If a public utility fails to complete a statement of property and legally postmark it for return by April 1, the administrator shall impose on such public utility a late filing penalty in the amount of one hundred dollars for each calendar day the statement of property remains delinquent; except that the late filing penalty shall not exceed three thousand dollars. If, by June 1, the public utility continues to be delinquent in filing a statement of property, the administrator shall, in addition to imposing a late filing penalty, determine the actual value of such utility on the basis of the best information available. All late filing penalties shall be credited to the general fund.

(b) If any public utility fails to file a completed statement of property, or includes in a filed statement of property any information concerning the public utility property which is false, erroneous, or misleading, or fails to include in the statement of property any taxable property owned by the public utility, then the administrator may determine the actual value of such taxable property on the basis of the best information available.

(c) If a public utility fails to file a statement of property and does not file a petition or complaint pursuant to section 39-4-108 regarding the actual value of its taxable property as determined on the basis of the best information available pursuant to this subsection (1.5), the public utility shall be deemed to have waived any right to file an abatement or refund petition regarding such actual value pursuant to section 39-10-114.

(2) All such statements filed with the administrator shall be considered private documents and shall be available only to the administrator and the employees of the division of property taxation and to assessors.

Source: L. 64: R&RE, p. 689, § 1. C.R.S. 1963: § 137-4-3. L. 70: p. 382, § 16. L. 72: p. 569, § 50. L. 76: (1) amended, p. 759, § 17, effective July 1, 1977. L. 87: (1.5) added, p. 1404, § 1, effective January 1, 1988. L. 89: (1)(a) amended, p. 1465, § 29, effective January 1, 1990. L. 90: (1.5)(a) amended, p. 1696, § 17, effective June 9. L. 93: (1.5)(a) amended, p. 1687, § 2, effective June 6. L. 96: (1.5)(c) added, p. 650, § 3, effective May 1.

Cross references: For perjury in the second degree and the penalty therefor, see §§ 18-8-503 and 18-1.3-501.

39-4-104. Inspection of records of utility. The division of property taxation, through the administrator, and its employees, shall have the right at any time, upon demand, to inspect the books, accounts, and records of any public utility doing business in this state for the purpose of verifying the information contained in its filed statement and to examine under oath any officer, employee, or agent of such public utility. Any person making such demand upon a public utility on behalf of the administrator shall produce and exhibit his authority to make such inspection or examination.

Source: L. 64: R&RE, p. 689, § 1. C.R.S. 1963: § 137-4-4. L. 70: p. 382, § 17.

39-4-105. Production of records. By order or subpoena, the administrator may require the production of any books, accounts, or records of any public utility doing business in this state, or verified copies of the same, for examination, and any public utility failing or refusing to comply with any such order or subpoena shall forfeit and pay to the state the sum of one hundred dollars for each day it so fails or refuses.

Source: L. 64: R&RE, p. 690, § 1. C.R.S. 1963: § 137-4-5. L. 70: p. 383, § 18.

39-4-106. Valuation of utilities - apportionment.

(1) Repealed.

(2) In the specific case of a telegraph company, the administrator shall:

(a) Determine, as of the last day of December of each year, the actual value of such company as a unit, or of its property and plant within this state, in the manner provided in section 39-4-102;

(b) Allocate to this state, if the actual value of such company is determined as a unit, that proportion of such actual value as in his judgment accurately represents the value of the property and plant of such company within this state, utilizing commonly recognized methods of allocation as in his judgment are just and equitable;

(c) Compute the valuation for assessment of such company in this state as provided in section 39-1-104;

(d) Apportion the valuation for assessment of such company in this state among the several counties of this state in such proportion as in his judgment will fairly represent the valuation for assessment within each such county, utilizing commonly recognized methods of apportioning as in his judgment are just and equitable.

(3) In the specific case of a telephone company, the administrator shall:

(a) Determine, as of the last day of December of each year, the actual value of such company as a unit, or of its property and plant within this state, in the manner provided in section 39-4-102;

(b) Allocate to this state, if the actual value of such company is determined as a unit, that proportion of such actual value as in his judgment accurately represents the value of the property and plant of such company within this state, utilizing commonly recognized methods of allocation as in his judgment are just and equitable;

(c) Compute the valuation for assessment of such company in this state as provided in section 39-1-104;

(d) Apportion the valuation for assessment of such company in this state among the several counties of this state in such proportion as in his judgment will fairly represent the valuation for assessment within each such county, utilizing commonly recognized methods of apportioning as in his judgment are just and equitable.

(4) Repealed.

(5) In the specific case of a pipeline company engaged in the transportation of gas, oil, or petroleum products or coal slurry or other coal products in pipelines through or in this state, the administrator shall:

(a) Determine, as of the last day of December of each year, the actual value of the property of such company within this state, either in the manner provided in section 39-4-102 or, with respect to its pipelines, on a diameter per inch per mile basis and its land, improvements, pump and compressor stations, and miscellaneous equipment, wherever situated, being valued separately in the same manner as all other real and personal property;

(b) Compute the valuation for assessment of such company in this state as provided in section 39-1-104;

(c) Apportion the valuation for assessment of such company in this state among the several counties of the state in such proportion as in his judgment will fairly represent the valuation for assessment within each such county, utilizing commonly recognized methods of apportioning as in his judgment shall be just and equitable.

(6) The administrator shall determine the actual value of all other public utilities doing business in this state in the manner provided in section 39-4-102 and shall apportion the valuation for assessment thereof, computed as provided in section 39-1-104, among the several counties of this state in which property of such public utilities is located in such proportion as in his judgment will fairly represent the valuation for assessment within each such county, utilizing commonly recognized methods of apportioning as in his judgment are just and equitable.

(7) (a) In the specific case of a railroad company, the administrator shall:

(I) Determine, as of the last day of December of each year, the actual value of such company as a unit or the actual value of its property and plant within this state, in the manner provided in section 39-4-102;

(II) Ascertain the total mileage of all railroad track of such company, wherever situated, if the actual value of such company is determined as a unit;

(III) Ascertain the total mileage of all railroad track of such company situated within this state and in the several counties thereof;

(IV) Ascertain the total mileage of all railroad main track of such company situated within this state and in the several counties thereof;

(V) Allocate to this state, if the actual value of such company is determined as a unit, that proportion of such actual value that the total mileage of all railroad track of such company situated within this state bears to the total mileage of all railroad track of such company, wherever situated;

(VI) Compute the valuation for assessment of such company in this state as provided in section 39-1-104;

(VII) Apportion the valuation for assessment of such company within this state among the several counties of this state in the proportion that the actual mileage of railroad main track within each such county bears to the total mileage of all railroad main track of such company within this state.

(b) This subsection (7) is effective January 1, 1987.

(8) (a) In the case of cars owned by a sleeping car company, a railroad express company, or a private car line company, the administrator shall:

(I) Ascertain the total railroad track miles made by all such cars within this state and in the several counties thereof during the preceding calendar year;

(II) Determine the actual value of all such cars, using commonly recognized methods of valuation;

(III) Compute the valuation for assessment of all such cars as provided in section 39-1-104;

(IV) Apportion the valuation for assessment of all such cars among the several counties of the state in such proportion as in his judgment will fairly represent the valuation for assessment within each such county.

(b) This subsection (8) is effective January 1, 1987.

Source: L. 64: R&RE, p. 690, § 1. C.R.S. 1963: § 137-4-6. L. 70: p. 383, § 19. L. 76: IP(5) amended, p. 768, § 2, effective April 26. L. 81: (1) and (4) repealed, p. 1855, § 7, effective January 1, 1982; (7) and (8) added, p. 1854, § 5, effective January 1, 1987. L. 83: (7)(b) and (8)(b) amended, p. 1497, § 5, effective April 28. L. 84: (7)(b) and (8)(b) amended, p. 990, § 4, effective February 23.

ANNOTATION

No commerce clause violation. Where the utility's intangible property, in-state circuits leased by the utility to transmit calls in and out of state, provides a sufficient nexus between the utility and the state to support a tax, and where the tax was apportioned in the tax administrator's judgment to represent the value of the utility's property and plant within the state, the resulting valuation for assessment did not violate the commerce clause. U.S. Transmission Sys. v. Bd. of Assmt. Appeals, 715 P.2d 1249 (Colo. 1986).

Allocation formula for apportioning the unitary value of a telephone company's property to Colorado. In the absence of a showing of significant prejudice by petitioner, the board's employment of a single factor allocation formula based on gross revenues was in compliance with the tax administrator's statutory charge to apportion fairly the value of the property and plant to represent the value attributable to the state. U.S. Transmission Sys. v. Bd. of Assmt. Appeals, 715 P.2d 1249 (Colo. 1986).

39-4-107. Statement of valuation to counties. No later than July 1 in each year, the administrator shall advise both the assessor of each county wherein property of a public utility is located and the public utility itself of the valuation of such public utility in such county, and such amount shall be entered on the tax roll of such county by the assessor in the same manner as though determined by the assessor.

Source: L. 64: R&RE, p. 692, § 1. C.R.S. 1963: § 137-4-7. L. 70: p. 384, § 20. L. 89: Entire section amended, p. 1465, § 30, effective June 7. L. 93: Entire section amended, p. 1687, § 3, effective June 6. L. 96: Entire section amended, p. 719, § 3, effective May 22.

39-4-108. Complaint - hearing - decision. (1) Any public utility, being of the opinion that the actual value of its property and plant as determined by the administrator is illegal, erroneous, or not uniform with the actual value of like property similarly situated, as determined by the administrator, may, no later than July 15, file a petition or complaint with the administrator, setting forth such illegality, error, or lack of uniformity.

(2) Any assessor or board of county commissioners, being of the opinion that the actual value of the property and plant of any public utility as determined by the administrator is illegal, erroneous, or not uniform with the actual value of like property similarly situated, as determined by the administrator, or that the amount of valuation of any public utility has not been correctly apportioned among the counties entitled thereto may, no later than July 15, file a petition or complaint with the administrator setting forth such illegality, error, lack of uniformity, or incorrect apportionment.

(3) Upon the filing of any petition or complaint provided for in this section, the administrator shall cause notice of such filing to be given to the assessor and the board of county commissioners of any county directly affected and to any public utility directly affected, as may appear from such petition or complaint. Such notice shall be mailed at least five days prior to the meeting with the administrator at which such petition or complaint will be heard.

(4) The administrator shall, on the first working day after notices of valuation are mailed and on succeeding days if necessary, hear all such petitions and complaints. In case there are several petitions or complaints filed involving like questions, the same may be consolidated for the purpose of hearing and determination. The administrator shall hear all evidence presented and listen to arguments touching upon the matters concerning which the petition or complaint was filed. He shall have power to subpoena and compel the attendance of witnesses and to require the production of any books or records deemed necessary to arrive at a proper determination of the matter. Upon good cause, any hearing may be adjourned from time to time, but in no event beyond July 27. Hearings conducted under this section shall be informal, and a verbatim record need not be made, as required under section 24-4-105 (13), C.R.S.

(5) The administrator shall render his decision upon any petition or complaint, in writing, no later than August 1 and shall transmit a copy thereof to all parties affected.

(6) If the administrator grants the petition, in whole or in part, the administrator shall make the appropriate corrections or changes in the valuation of such public utility, or in the apportionment thereof, and shall certify the same to the assessor of the county affected thereby. Such decision shall control all proceedings thereafter, the same as though originally certified by the administrator.

(7) If the administrator denies the petition, in whole or in part, all costs and expenses incurred in conducting the hearing shall be chargeable to the petitioner and shall be enforceable and collectible as in the case of other claims and demands.

(8) Further proceedings brought by a party adversely affected by the administrator's decision shall be before the board of assessment appeals under the provisions of section 39-2-125 or before the Denver district court for a trial de novo with no presumption in favor of any pending valuation, and no judicial review shall be available to any party under the provisions of section 39-4-109 until the board or the district court has rendered its decision.

Source: L. 64: R&RE, p. 692, § 1. C.R.S. 1963: § 137-4-8. L. 70: p. 384, § 21. L. 89: (1), (2), (4), and (5) amended, p. 1465, § 31, effective June 7. L. 93: (1), (2), (4), and (5) amended, p. 1688, § 4, effective June 6. L. 96: (2), (6), and (8) amended, p. 720, § 4, effective May 22. L. 2000: (8) amended, p. 1739, § 3, effective June 1.

ANNOTATION

This section provides no basis for the contention that the abatement and refund scheme is inapplicable to state-assessed public utility

property or that the protest and adjustment scheme is the exclusive method for adjusting property tax disputes involving such property.

Huerfano County Bd. of County Comm'rs v. Atlantic Richfield Co., 976 P.2d 893 (Colo. App. 1999).

The protest and adjustment procedure under this section is a separate and independent procedural system from the abatement and re-

fund procedure and is governed by a different statute. Huerfano County Bd. of County Comm'rs v. Atlantic Richfield Co., 976 P.2d 893 (Colo. App. 1999).

Applied in People v. Nichols, 34 Colo. App. 276, 527 P.2d 941 (1974).

39-4-109. Judicial review. (1) Any petitioner or any other public utility, assessor, or board of county commissioners adversely affected or the administrator may appeal any decision of the board of assessment appeals or the district court denying a petition in whole or in part to the court of appeals. No new or additional evidence may be introduced in the court of appeals unless such other public utility, assessor, or board of county commissioners adversely affected has had no opportunity to present such evidence at the hearing before the board of assessment appeals or at the trial in the district court; otherwise, the cause shall be heard on the record of the board of assessment appeals or the district court, which shall be certified by it to the court in which the appeal was taken. Whenever any new or additional evidence is introduced, the court, in its discretion, may remand the case to the board of assessment appeals or the district court for rehearing.

(2) An appeal may be taken to the court of appeals according to the Colorado appellate rules and the provisions of section 24-4-106 (11), C.R.S., after the decision of the board of assessment appeals or the district court is issued, but, if the appeal is taken by the public utility actually owning the property involved in the petition to the board of assessment appeals or the district court, such public utility shall pay the full amount of all taxes levied upon the valuation for assessment of its property and plant to the treasurer of the county in which the same is located prior to taking its appeal.

(3) If, upon appeal to the court of appeals, the petitioner is sustained, in whole or in part, then, upon presentation to the treasurer to whom the taxes were paid of a certified copy of the order modifying the valuation for assessment of its property and plant, the treasurer shall forthwith make the appropriate refund of taxes, together with refund interest at the same rate as delinquent interest as specified in section 39-10-104.5, and the petitioner shall also be entitled to a refund of costs incurred in the hearing before the board of assessment appeals or the trial in the district court and in the appeal to the court or such portion thereof as the court may decree; but, if judgment is for the board of assessment appeals, then the board of assessment appeals shall receive its costs from the appellant. Such refund interest shall only accrue from the date on which payment of taxes was received by the treasurer from the petitioner.

Source: L. 64: R&RE, p. 694, § 1. C.R.S. 1963: § 137-4-9. L. 70: p. 385, § 22. L. 83: (1) and (2) amended, p. 2086, § 3, effective October 13. L. 90: Entire section amended, p. 1690, § 7, effective June 9. L. 92: (3) amended, p. 2224, § 6, effective April 9; (3) amended, p. 2185, § 66, effective June 2. L. 93: (3) amended, p. 305, § 5, effective April 7. L. 2000: Entire section amended, p. 1739, § 4, effective June 1.

Cross references: For the legislative declaration contained in the 2000 act amending this section, see section 1 of chapter 358, Session Laws of Colorado 2000.

39-4-110. Certification and assessment of pollution control property. (Repealed)

Source: L. 78: Entire section added, p. 468, § 2, effective July 1. L. 79: (3) added, p. 1456, § 4, effective June 22. L. 81: (3) R&RE, p. 1872, § 5, effective June 29. L. 88: Entire section repealed, p. 1275, § 14, effective May 29, 1988.

ARTICLE 4.1**Valuation and Assessment of Rail Transportation Property****39-4.1-101 to 39-4.1-110. (Repealed)**

Editor's note: (1) This article was added in 1981. For amendments to this article prior to its repeal in 1987, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

(2) Section 39-4.1-110 provided for the repeal of this article, effective January 1, 1987. (See L. 84, p. 990.)

ARTICLE 5**Valuation and Taxation**

PART 1		39-5-114.	Unclassified property shown on schedule.
REAL AND PERSONAL PROPERTY		39-5-115.	Taxpayer to furnish information - affidavit on mineral leases.
39-5-101.	Duties of assessor.	39-5-116.	Failure to file schedule - failure to fully and completely disclose.
39-5-102.	When schedules required - non-resident owners listed.	39-5-117.	Property improvements destroyed after assessment date.
39-5-103.	Property described.	39-5-118.	Failure to receive schedule - validity of valuation.
39-5-103.5.	Maps of parcels of land in the county.	39-5-119.	Refusal to answer - court order.
39-5-104.	Valuation of property.	39-5-120.	Tax schedules endorsed and filed - availability for inspection.
39-5-104.5.	Valuation of personal property.	39-5-121.	Notice of valuation - legislative declaration.
39-5-104.7.	Valuation of real and personal property that produces alternating current electricity from a renewable energy source.	39-5-121.5.	Valuation - inspection of data by taxpayers.
39-5-105.	Improvements - water rights - valuation.	39-5-122.	Taxpayer's remedies to correct errors.
39-5-106.	Purchase of state land.	39-5-122.1.	Appeal from illegal increase in valuation of property resulting from order of state board. (Repealed)
39-5-107.	Personal property schedule.	39-5-122.5.	Taxpayer's remedies - property tax credit for incorrect valuations used for property tax levied in 1987 for collection in 1988. (Repealed)
39-5-108.	Schedule sent to taxpayer - return.	39-5-122.7.	Alternate protest and appeal procedure for specified counties.
39-5-108.5.	Furnished residential real property rental advertisements - information to be provided to the assessor - legislative declaration.	39-5-123.	Abstract of assessment or amended abstract of assessment.
39-5-109.	Inventory schedules - valuation. (Repealed)	39-5-124.	Property tax administrator to examine abstract.
39-5-110.	Property brought into state after assessment date - removal before next assessment date.	39-5-125.	Omission - correction of errors.
39-5-111.	Livestock, agricultural products - not valued, when. (Repealed)	39-5-126.	Wrongful return by assessor.
39-5-112.	Livestock - apportionment of value. (Repealed)	39-5-127.	Correction of assessments.
39-5-113.	Movable equipment - apportionment of value.	39-5-128.	Certification of valuation for assessment.
39-5-113.3.	Oil and gas drilling rigs - apportionment of value.		
39-5-113.5.	Works of art - apportionment of value.		

39-5-129.	Delivery of tax warrant - public inspection.	39-5-202.	Taxation of mobile homes - effective date.
39-5-130.	Informality not to invalidate.	39-5-203.	Mobile homes - determination of value.
39-5-131.	Certification and valuation of pollution control property. (Repealed)	39-5-204.	Notification concerning mobile homes in a county for part of a year.
39-5-132.	Assessment and taxation of new construction.	39-5-205.	Relocation of a mobile home - collection of taxes.
39-5-133.	2011 modification of statutory definition of "agricultural land" - TABOR election - adjustment of district mill levy.	39-5-206.	Payments to counties, cities, towns, and special districts in lieu of taxes for calendar year 1978. (Repealed)

PART 2

MOBILE HOMES

39-5-201. Legislative declaration.

PART 1

REAL AND PERSONAL PROPERTY

Editor's note: This part 1 was repealed and reenacted in 1964. For historical information concerning the repeal and reenactment, see the editor's note before the article 1 heading.

39-5-101. Duties of assessor. The assessor shall list all taxable real and personal property located within his county on the assessment date, other than that comprising the property and plant of public utilities.

Source: L. 64: R&RE, p. 694, § 1. C.R.S. 1963: § 137-5-1. L. 73: p. 237, § 19. L. 75: Entire section amended, p. 1467, § 12, effective July 18. L. 81: Entire section amended, p. 1855, § 6, effective January 1, 1982. L. 94: Entire section amended, p. 1646, § 80, effective July 1.

ANNOTATION

Annotator's note. The following annotations include cases decided under this section as it existed prior to its 1964 repeal and reenactment.

Office of county assessor created by constitution. The office of county assessor in each county was created by the constitution, but the duties thereof are prescribed by legislative acts. Bartlett & Co. v. Bd. of County Comm'rs, 152 Colo. 388, 382 P.2d 193 (1963).

Legislative duties must comply with constitution. County assessors have specific duties to

perform in conformity with legislative directions and, in performing such duties, they must comply with the general admonition of § 3 of art. X, Colo. Const., with the ultimate goal of securing just and equalized valuations. Bartlett & Co. v. Bd. of County Comm'rs, 152 Colo. 388, 382 P.2d 193 (1963).

Applied in Bd. of County Comm'rs v. Colo. Bd. of Assmt. Appeals, 628 P.2d 156 (Colo. App. 1981).

39-5-102. When schedules required - nonresident owners listed. (1) Ownership of real property shall be ascertained by the assessor from the records of the county clerk and recorder, and owners of real property shall not be required to file schedules listing the same; but any person having or claiming to have an undivided interest in any real property, or any inchoate, possessory, or equitable interest therein, or any other estate less than the fee, or any lien on any real property may file a schedule with the assessor, specifying such interest.

(2) When the ownership of any real or personal property cannot be ascertained by the assessor after due diligence, he may list such property under the legend "owner unknown".

(3) The assessor shall furnish annually by the first day of June to the executive director of the department of revenue a list of the names and addresses of all nonresidents of the state as shown by the assessor's records as of the previous assessment date to have owned real or personal property within the county.

Source: L. 64: R&RE, p. 695, § 1. C.R.S. 1963: § 137-5-2. L. 69: p. 1132, § 1.

39-5-103. Property described. In listing tracts or parcels of real property, the assessor shall identify the same by section, or part of a section, township, and range, and, if such part of a section is not a legal subdivision, then by some other description sufficient to identify the same. In listing town or city lots, he shall describe the same by number of lot and block, or otherwise, in accordance with the system of numbering or describing used by the town or city in which said lots are located.

Source: L. 64: R&RE, p. 695, § 1. C.R.S. 1963: § 137-5-3.

39-5-103.5. Maps of parcels of land in the county. (1) Prior to January 1, 1981, each assessor shall prepare and maintain full, accurate, and complete maps showing the parcels of land in his county. The maps shall include a master county index map, together with applicable township, section, and quarter-section maps, depending on density. Guidelines shall be established by the administrator to produce uniformity throughout the state. The guidelines shall include the definition of a parcel, the development of a parcel numbering system, map size, map scale, and suggestions for minimum information to be plotted.

(2) In fulfilling the duty imposed upon him by subsection (1) of this section, the assessor may employ other mapping resources or maps available to him.

Source: L. 76: Entire section added, p. 770, § 1, effective July 1.

39-5-104. Valuation of property. Each tract or parcel of land and each town or city lot shall be separately appraised and valued, except when two or more adjoining tracts, parcels, or lots are owned by the same person, in which case the same may be appraised and valued either separately or collectively. When a single structure, used for a single purpose, is located on more than one town or city lot, the entire land area shall be appraised and valued as a single property.

Source: L. 64: R&RE, p. 695, § 1. C.R.S. 1963: § 137-5-4.

ANNOTATION

Annotator's note. The following annotations include cases decided under this section as it existed prior to its 1964 repeal and reenactment.

Separate assessments for estates owned by different persons. This section requires separate assessment where separate estates are owned by different persons. If the separate estate of an owner of an oil interest is held to be included in a description by section number of the surface without more to identify the severed interest, the result would be that the estate in oil is taxed without notice to the owner. *Mitchell v. Espinosa*, 125 Colo. 267, 243 P.2d 412 (1952).

This section permits single assessment of several adjoining lots if returned by the same person. *Crisman v. Johnson*, 23 Colo. 264, 47 P. 296 58 Am. St. R. 224 (1896).

Lots are presumed to be adjoining if so assessed. As public policy requires that all presumptions should be in favor of the legality of an assessment, where a complaint in an action protesting an assessment does not allege that the lots were not adjoining, the presumption is that they were. *Bd. of County Comm'rs v. Yingling*, 14 Colo. App. 449, 60 P. 582 (1900).

39-5-104.5. Valuation of personal property. (1) On and after January 1, 1996, personal property shall be valued as of the assessment date, and the tax shall apply for the full assessment year without regard to any destruction, conveyance, relocation, or change in tax status occurring after the assessment date. The owner of taxable personal property on the assessment date shall be responsible for the property tax assessed for the full property tax year without proration.

(2) Personal property tax obligations resulting from any conveyance, relocation, or

change in tax status of the property during the property tax year that are not in the process of collection as of January 1, 1997, shall be waived, and the treasurer shall not commence any action to collect such obligations.

Source: L. 96: Entire section added, p. 45, § 5, effective March 20.

Cross references: For the legislative declaration contained in the 1996 act enacting this section, see section 1 of chapter 16, Session Laws of Colorado 1996.

39-5-104.7. Valuation of real and personal property that produces alternating current electricity from a renewable energy source. (1) (a) Except as provided in paragraph (b) of this subsection (1), on and after January 1, 2008, all real and personal property used to produce two megawatts or less of alternating current electricity from a renewable energy source shall be valued by the assessor in the county where the property is located in accordance with valuation procedures developed by the administrator.

(b) The valuation requirements specified in paragraph (a) of this subsection (1) shall not apply to small or low impact hydroelectric energy facilities, geothermal energy facilities, biomass energy facilities, solar energy facilities, or wind energy facilities, as those terms are defined in section 39-4-101.

(2) In developing the valuation procedures specified in paragraph (a) of subsection (1) of this section, the administrator shall utilize the procedures adopted for determining the actual value of a renewable energy facility as specified in section 39-4-102 (1) (e).

(3) A taxpayer shall notify the taxpayer's county assessor when the taxpayer installs real and personal property used to produce two megawatts or less of alternating current electricity from a renewable energy source; except that, if the taxpayer obtains a building permit under the jurisdiction of a local government for the installation, the notification required in this subsection (3) shall not be necessary.

Source: L. 2008: Entire section added, p. 1318, § 1, effective May 27. **L. 2009:** (1)(b) amended, (SB 09-177), ch. 186, p. 814, § 3, effective April 22. **L. 2010:** (1)(b) amended, (SB 10-019), ch. 382, p. 1787, § 3, effective June 8; (1)(b) amended, (SB 10-174), ch. 189, p. 815, § 10, effective August 11; (1)(b) amended, (SB 10-177), ch. 392, p. 1864, § 5, effective August 11.

Editor's note: Amendments to subsection (1)(b) by Senate Bill 10-019, Senate Bill 10-174, and Senate Bill 10-177 were harmonized.

Cross references: For the legislative intent contained in the 2008 act enacting this section, see section 9 of chapter 302, Session Laws of Colorado 2008.

39-5-105. Improvements - water rights - valuation. (1) Improvements shall be appraised and valued separately from land, except improvements other than buildings on land which is used solely and exclusively for agricultural purposes, in which case the land, water rights, and improvements other than buildings shall be appraised and valued as a unit.

(1.1) (a) (I) Water rights, together with any dam, ditch, canal, flume, reservoir, bypass, pipeline, conduit, well, pump, or other associated structure or device as defined in article 92 of title 37, C.R.S., being used to produce water or held to produce or exchange water to support uses of any item of real property specified in section 39-1-102 (14), other than for agricultural purposes, shall not be appraised and valued separately but shall be appraised and valued with the item of real property served as a unit.

(II) For purposes of this section, valuing the water rights and the item of real property served by the water rights "as a unit" means that any increase in value of the property served with water made available directly, or by exchange, by the use of any dam, ditch, pipeline, canal, flume, reservoir, bypass, conduit, well, pump, or other associated structure or device, as defined in article 92 of title 37, C.R.S., shall be included in the valuation of the real property served by the water rights.

(b) The general assembly finds and declares that the value of water rights, and any dam, ditch, pipeline, canal, flume, reservoir, bypass, conduit, well, pump, or other associated structure or device, as defined in article 92 of title 37, C.R.S., used or held to produce or exchange water, for taxation purposes, should be recognized as a contribution to the value of all of the interests in the entire property served thereby and that the separate valuation of such water rights could result in double taxation. The provision of this subsection (1.1) shall not be construed to exempt any water rights from taxation but shall be construed as setting forth procedures for the valuation thereof.

(2) and (3) Repealed.

Source: L. 64: R&RE, p. 695, § 1. C.R.S. 1963: § 137-5-5. L. 75: Entire section amended, p. 1474, § 2, effective July 1. L. 76: Entire section amended, p. 771, § 1, effective May 26; (1) amended, p. 760, § 18, effective January 1, 1977. L. 77: (3) added, p. 1753, § 1, effective June 19. L. 79: (1) amended, p. 1404, § 2, effective July 1. L. 83: (1.1) added, p. 1503, § 1, effective May 25. L. 87: (2) and (3) repealed, p. 1304, § 1, effective May 20. L. 96: (1.1) amended, p. 468, § 1, effective April 23.

Cross references: For manner of determination of actual value of agricultural lands, see § 39-1-103 (5).

39-5-106. Purchase of state land. The equity in land purchased from the state under contract shall, during the term of such contract, be appraised and valued in the same manner as though held in fee by the purchaser, and any improvements on such land shall be appraised and valued in the same manner as other improvements.

Source: L. 64: R&RE, p. 695, § 1. C.R.S. 1963: § 137-5-6.

39-5-107. Personal property schedule. (1) All taxable personal property shall be listed on a form of schedule approved by the administrator and prepared and furnished by the assessor. Such schedule shall be so designed as to show the owner's name, address, social security number or federal employer identification number, and the location and general description of the owner's taxable personal property, divided into the various subclasses, and shall provide sufficient space for the furnishing of such information, derived from the books of account, records, or Colorado income tax returns of the owner of such property, as may be required by the assessor to determine the actual value of such property.

(2) There shall be subjoined to such schedule the following declaration:

"I declare, under the penalty of perjury in the second degree, that this schedule, together with any accompanying exhibits or statements, has been examined by me and to the best of my knowledge, information, and belief sets forth a full and complete list of all taxable personal property owned by me, or in my possession, or under my control, located in county, Colorado, on the assessment date of this year; that such property has been reasonably described and its value fairly represented; and that no attempt has been made to mislead the assessor as to its age, quality, quantity, or value.

..... Owner

..... Date

..... Agent"

Source: L. 64: R&RE, p. 695, § 1. C.R.S. 1963: § 137-5-7. L. 72: p. 569, § 51. L. 73: p. 238, § 20. L. 75: (1) amended, p. 1468, § 13, effective July 18. L. 84: (1) amended, p. 984, § 2, effective May 8. L. 89: (1) amended, p. 1483, § 7, effective April 23. L. 96: (1) amended, p. 46, § 4, effective March 20. L. 99: (1) amended, p. 276, § 1, effective August 4.

Cross references: (1) For perjury in the second degree and the penalty therefor, see §§ 18-8-503 and 18-1.3-501.

(2) For the legislative declaration contained in the 1996 act amending this section, see section 1 of chapter 16, Session Laws of Colorado 1996.

ANNOTATION

Applied in *City & County of Denver v. Security Life & Accident Co.*, 173 Colo. 248, 447 P.2d 369 (1970).

39-5-108. Schedule sent to taxpayer - return. As soon after the assessment date as may be practicable, the assessor shall mail or deliver one copy of the personal property schedule to the place of business or to the residence of each person known or believed to own taxable personal property located in the county, or to the agent of such person. Such person or his or her agent shall list in such schedule all taxable personal property owned by him or her, or in his or her possession, or under his or her control located in said county on the assessment date, attaching such exhibits or statements thereto as may be necessary, and shall sign and return the original copy thereof to the assessor no later than the April 15 next following. Exhibits and statements attached to the personal property schedule shall be deemed sufficient for the purposes of the schedule if such exhibits or statements clearly list the property, the cost of the property, and the date the property was acquired.

Source: L. 64: R&RE, p. 696, § 1. C.R.S. 1963: § 137-5-8. L. 67: pp. 948, 952, §§ 13, 26. L. 79: Entire section amended, p. 1416, § 1, effective June 21. L. 81: Entire section amended, p. 1831, § 5, effective June 12. L. 2000: Entire section amended, p. 751, § 3, effective May 23. L. 2008: Entire section amended, p. 948, § 2, effective August 5.

39-5-108.5. Furnished residential real property rental advertisements - information to be provided to the assessor - legislative declaration. (1) The general assembly hereby finds and declares that:

(a) Each assessor is required by law to discover and assess taxable personal property in the assessor's county and to provide each person known or believed to own taxable personal property in the county with a personal property schedule;

(b) Each owner of taxable personal property is required by law to list the owner's taxable personal property on the personal property schedule, and the receipt of a personal property schedule from the assessor provides notice to a property owner that the property owner may own taxable personal property, which helps to ensure that:

(I) More property owners comply with state property tax laws;

(II) The property tax burden is more fairly distributed; and

(III) The amount of property tax revenues lost by local governments due to property owners' lack of knowledge regarding the taxable status of certain personal property is minimized;

(c) Personal property that is used to furnish residential real property is exempt from property taxation so long as it is not used for the production of income at any time, but generally becomes subject to taxation if the residential real property is offered for rent on a furnished basis or otherwise used for business purposes;

(d) In certain areas of the state, a high proportion of residential real property is advertised for rent on a furnished basis directly by property owners or by real estate agents, property management companies, lodging companies, and internet and print-based listing services that act as agents for multiple property owners and advertise multiple properties for rent, and because the advertisements typically do not precisely identify the property offered for rent by address or the owner's name:

(I) It is difficult for each assessor to accurately identify which parcels of furnished residential real property are being offered for rent and to which owners of furnished residential real property the assessor should provide personal property schedules; and

(II) This difficulty impairs the fairness and efficiency of the property tax system and reduces property tax collections by making it more likely that owners of furnished residential real property rented to others will, in some cases deliberately and in many other

cases due to a lack of notice regarding state property tax laws, fail to pay property taxes due on personal property used to furnish the residential real property; and

(e) It is therefore necessary and appropriate to require the owner of furnished residential real property or an agent of the owner who advertises the property for rent to provide identifying information regarding the property to the assessor of the county in which the property is located upon the request of the assessor made no more than twice during any year as specified in this section or as mutually agreed to by the assessor and the owner or agent pursuant to paragraph (b) of subsection (2) of this section.

(2) (a) Upon the request of the assessor of any county or city and county made no more than twice during any year:

(I) A property owner who advertises for rent furnished residential real property that is located within the county or city and county shall provide to the assessor a list that identifies each property so advertised by address; and

(II) An agent who advertises for rent on behalf of a property owner furnished residential real property that is located within the county or city and county shall provide to the assessor a list that identifies each property so advertised by owner and address.

(b) An assessor and a property owner or agent may mutually agree that the owner or agent shall annually provide to the assessor by a specified date the information that an assessor may require to be provided pursuant to paragraph (a) of this subsection (2).

(3) For purposes of this section, "agent" means a real estate broker, as defined in section 12-61-101 (2) (a), C.R.S., a property management company, a lodging company, an internet web site listing service, a print-based listing service, or any other person that either separately or as part of a package of services advertises furnished residential real property in the state for rent on behalf of the owner of the property in exchange for compensation.

Source: L. 2009: Entire section added, (HB 09-1110), ch. 162, p. 698, § 1, effective August 5.

39-5-109. Inventory schedules - valuation. (Repealed)

Source: L. 64: R&RE, p. 697, § 1. **C.R.S. 1963:** § 137-5-9. **L. 65:** p. 1096, § 3. **L. 67:** p. 801, § 1. **L. 73:** p. 1439, § 1. **L. 75:** (5)(b) amended, p. 225, § 86, effective July 16. **L. 76:** (6)(b) amended p. 760, § 19, effective January 1, 1977. **L. 83:** Entire section repealed, p. 1485, § 11, effective April 22.

39-5-110. Property brought into state after assessment date - removal before next assessment date. (1) Whenever any taxable personal property is brought from outside the state into any county of the state at any time after the assessment date in any year, the owner shall list the property on the personal property schedule sent to the taxpayer pursuant to section 39-5-108.

(2) If any taxable personal property located in the state on the assessment date or brought into the state at any time after the assessment date is removed from the state before the next following assessment date, the owner of the property shall not be relieved of any tax obligation with respect to the property as a result of the transfer of the property for the property tax year in which the transfer occurred.

(3) Repealed.

(4) Notwithstanding any other provision of this section, oil and gas drilling rigs shall be valued pursuant to section 39-5-113.3.

Source: L. 64: R&RE, p. 698, § 1. **C.R.S. 1963:** § 137-5-10. **L. 67:** p. 949, § 14. **L. 83:** (3) repealed, p. 1485, § 11, effective April 22. **L. 87:** (2) amended, p. 1412, § 1, effective April 23. **L. 96:** (1) and (2) amended, p. 47, § 6, effective March 20; (4) added, p. 1200, § 5, effective June 1.

Cross references: (1) For the assessment date, see § 39-1-105.

(2) For the legislative declaration contained in the 1996 act amending subsections (1) and (2), see section 1 of chapter 16, Session Laws of Colorado 1996.

39-5-111. Livestock, agricultural products - not valued, when. (Repealed)

Source: L. 64: R&RE, p. 699, § 1. C.R.S. 1963: § 137-5-11. L. 75: (2) amended and (3) added, p. 1476, § 1, effective April 9. L. 76: (2) amended, p. 760, § 20, effective January 1, 1977. L. 83: Entire section repealed, p. 1485, § 11, effective April 22.

39-5-112. Livestock - apportionment of value. (Repealed)

Source: L. 64: R&RE, p. 699, § 1. C.R.S. 1963: § 137-5-12. L. 67: p. 949, § 15. L. 76: Entire section repealed, p. 765, § 33, effective January 1, 1977.

39-5-113. Movable equipment - apportionment of value. (1) Any person owning any portable or movable equipment which is apt to be located or maintained in two or more counties of the state during any calendar year shall indicate in a statement accompanying his personal property schedule the kind and description and a serial number, if available, of such equipment, the counties in which such equipment is apt to be located or maintained, and the estimated period of time during the calendar year in which such equipment is apt to be so located and maintained.

(2) The assessor of the county in which such equipment is located on the assessment date shall determine its value and shall apportion such value between the counties affected and the school districts thereof, in the proportion that the periods of time during which such equipment may be located or maintained in such counties bear to the full calendar year. He shall furnish a copy of such valuation and apportionment to the owner of such equipment or to his agent and shall also transmit a copy thereof to the assessor of each county affected as his authority to list the apportioned value of such equipment on the assessment roll of his county. For purposes of making such apportionment, the valuation of the portable or movable equipment made by the assessor of the county of original assessment shall be used by all county assessors involved.

(3) If, subsequent to the making of such apportionment of value, any such equipment is removed to a county not initially included in such apportionment or if any such equipment is located or maintained in any county for a period of time different from that used in the initial apportionment, then an amended apportionment of value shall be requested by the assessor of any county so affected. Such assessor shall furnish a copy of such requested amended apportionment to the owner of such equipment or to his agent and shall also transmit a copy thereof to the assessor of each county affected, as his authority to list such reapportioned value on the assessment roll of his county. Failure of a county assessor to request such an amended apportionment shall permit the original apportionment of value to stand, and no other county assessor shall assess such equipment as is listed in the original apportionment for any period during the year of the original assessment. If such amended apportionment of value is received by any assessor after he has filed his annual abstract of assessment with the administrator, then either an abatement or an additional assessment shall be made, as the case may be.

(4) Repealed.

Source: L. 64: R&RE, p. 700, § 1. C.R.S. 1963: § 137-5-13. L. 65: p. 1099, § 1. L. 76: (4) repealed, p. 765, § 33, effective January 1, 1977. L. 90: (2) amended, p. 1696, § 18, effective June 9.

39-5-113.3. Oil and gas drilling rigs - apportionment of value. (1) As soon after the assessment date as may be practicable, the assessor shall determine those oil or gas drilling rigs that were operating, stored, or maintained in the county during the preceding calendar year and shall mail or deliver two copies of a declaration to the place of business or drilling operation or to the residence of each person known or believed to own such rigs,

or to the agent of such person. Such person or his agent shall list in such declaration all oil or gas drilling rigs owned by him, or in his possession, or under his control that were located in said county during the previous calendar year, attaching thereto the drilling logs of the respective rigs showing their various locations and corresponding dates. In addition, such person or his agent shall provide to the assessor of the first county in Colorado listed on each rig's log an inventory of that rig's equipment sufficient to determine a valuation for assessment. The original copy of the declaration shall be signed and returned to the assessor no later than the April 15 next following.

(2) The assessor, upon receiving such inventory and notification that his county was the first location of the rig in Colorado, shall determine its value and shall apportion such value between the counties in which the drilling rig was located during the preceding year and the districts thereof, in the proportion that the periods of time during which such equipment was located or maintained in such counties bear to the full calendar year. On or before June 15, the assessor shall furnish a copy of such valuation and apportionment to the owner of such equipment or to his agent and shall also transmit a copy thereof to the assessor of each county affected, together with a copy of the drilling log for that rig. For purposes of making such apportionment, the valuation of the oil or gas drilling rig made by the assessor of the first Colorado county on the log shall be used by all county assessors involved. In the subsequent counties, the assessor shall accept the returned declaration with the rig's name and location data as a proper filing.

(3) The values so apportioned shall be included in the affected counties' abstracts of assessment filed pursuant to section 39-5-123.

(4) This section shall apply to the apportionment of value of oil or gas drilling rigs and not the provisions of section 39-5-113.

(5) For purposes of this section "oil and gas drilling rigs" shall be defined by the property tax administrator pursuant to section 39-2-109 (1) (e), which definitions shall be uniform and consistent throughout the state.

Source: L. 86: Entire section added, p. 1107, § 1, effective January 1, 1987. L. 88: (2) amended, p. 1297, § 4, effective April 29. L. 90: (2) amended, p. 1696, § 19, effective June 9.

39-5-113.5. Works of art - apportionment of value. (1) Any persons owning any works of art which are apt to be displayed in any county of the state during any calendar year shall indicate in a statement accompanying their personal property schedule the kind and description of such works of art and the estimated period of time during the calendar year in which such works of art are to be so displayed and shall provide to the assessor proof of exemption pursuant to the provisions of sections 39-3-123 and 39-26-102 (2.5). Failure to file a statement results in forfeiture of a claim for exemption in that calendar year.

(2) The assessor of the county in which such works of art are displayed shall determine its value in the proportion that the periods of time during which such works of art may be displayed bear to the full calendar year. He shall furnish a copy of such valuation to the owner of such works of art or to his agent.

Source: L. 84: Entire section added, p. 999, § 2, effective January 1. L. 89: (1) amended, p. 1484, § 8, effective April 23. L. 90: (2) amended, p. 1697, § 20, effective June 9.

39-5-114. Unclassified property shown on schedule. If any person owns, holds, or controls any kind or character of taxable personal property which is not specifically classified on the personal property schedule, he shall note such property therein, and such notation shall be held to be a sufficient description thereof for purposes of valuing the same, without further enumeration or description; but if the assessor so requests, such person shall disclose of what said property consists and its uses in detail.

Source: L. 64: R&RE, p. 702, § 1. C.R.S. 1963: § 137-5-14.

39-5-115. Taxpayer to furnish information - affidavit on mineral leases. (1) At any time prior or subsequent to April 15 of each year, the assessor may request any person known or believed to own taxable property located in his county to furnish such information or to make available for examination such records as may be required by him to determine the actual value of such property.

(2) Within ten days after the execution of a mineral lease, a lessor shall file with the assessor an affidavit stating the annual net rental payable under such lease for the purposes of determining the actual value of such mineral interest where the income approach to appraisal is utilized by the assessor. Such affidavit shall constitute a private document and shall be available on a confidential basis as provided in section 39-5-120.

Source: L. 64: R&RE, pp. 315, 702, §§ 294, 1. C.R.S. 1963: § 137-5-15. L. 75: Entire section amended, p. 226, § 87, effective July 16. L. 79: Entire section amended, p. 1416, § 2, effective June 21. L. 81: Entire section amended, p. 1832, § 6, effective June 12. L. 85: Entire section amended, p. 1213, § 11, effective May 9.

39-5-116. Failure to file schedule - failure to fully and completely disclose. (1) If any person owning taxable personal property to whom one or more personal property schedules have been mailed, or upon whom the assessor or his deputy has called and left one or more schedules, fails to complete and return the same to the assessor by the April 15 next following, unless by such date such person has requested an extension of filing time as provided for in this section, the assessor shall impose a late filing penalty in the amount of fifty dollars or, if a lesser amount, fifteen percent of the amount of tax due on the valuation for assessment determined for the personal property for which any delinquent schedule or schedules are required to be filed. Any person who is unable to properly complete and file one or more of such schedules by April 15 may request an extension of time for filing, for a period of either ten or twenty days, which request shall be in writing and shall be accompanied by payment of an extension fee in the amount of two dollars per day of extension requested. A single request for extension shall be sufficient to extend the filing date for all such schedules which a person is required to file in a single county. Any person who fails to file one or more schedules by the end of the extension time requested shall be subject to a late filing penalty as though no extension had been requested. Further, if any person fails to complete and file one or more schedules by April 15 or, if an extension is requested, by the end of the requested extension, then the assessor may determine the actual value of such person's taxable personal property on the basis of the best information available to and obtainable by him and shall promptly notify such person or his agent of such valuation. Extension fees and late filing penalties shall be fees of the assessor's office. Penalties, if unpaid, shall be certified to the treasurer for collection with taxes levied upon the person's property.

(2) (a) If any person owning taxable personal property to whom two successive personal property schedules have been mailed or upon whom the assessor or his deputy has called and left one or more schedules fails to make a full and complete disclosure of his personal property for assessment purposes, the assessor, after notifying the person of his failure to make such a full and complete disclosure and allowing such person ten days from the date of notification to comply, shall, upon discovery, determine the actual value of such person's taxable property on the basis of the best information available to and obtainable by him and shall promptly notify such person or his agent of such valuation. The assessor shall impose a penalty in an amount of up to twenty-five percent of the valuation for assessment determined for the omitted personal property. Penalties, if unpaid, shall be certified to the treasurer for collection with taxes levied upon the person's personal property. A person fails to make a full and complete disclosure of his personal property pursuant to this paragraph (a) if he includes in a filed schedule any information concerning his property which is false, erroneous, or misleading or fails to include in a schedule any taxable property owned by him.

(b) Any person who makes full and complete disclosure on the first personal property schedules issued to him on or after August 1, 1987, shall not be assessed a penalty for property previously omitted from the assessment rolls under this article.

(c) Any person subject to paragraph (a) of this subsection (2) shall have the right to pursue the administrative remedies available to taxpayers under this title, dependent upon the basis of his claim.

Source: L. 64: R&RE, p. 702, § 1. C.R.S. 1963: § 137-5-16. L. 76: p. 761, § 21. L. 79: p. 1416, § 3. L. 80: p. 498, § 2. L. 81: p. 1832, § 7. L. 82: p. 549, § 14. L. 87: Entire section amended, p. 1414, § 1, effective August 1. L. 88: (2)(a) amended, p. 1273, § 8, effective August 1.

39-5-117. Property improvements destroyed after assessment date. Whenever any improvements are destroyed or demolished subsequent to the assessment date in any year, it is the duty of the owner thereof or the owner's agent to promptly notify the assessor of such destruction or demolition and the date upon which the same occurred. In all such cases, such improvements shall be valued by the assessor at the proportion of its valuation for the full calendar year that the period of time in such year prior to its destruction or demolition bears to the full calendar year. Failure of the owner thereof or of the owner's agent to so notify the assessor prior to the date taxes are levied shall be considered a waiver, and no proportionate valuation by the assessor shall then be required.

Source: L. 64: R&RE, p. 702, § 1. C.R.S. 1963: § 137-5-17. L. 96: Entire section amended, p. 47, § 7, effective March 20.

Cross references: (1) For the assessment date, see § 39-1-105.

(2) For the legislative declaration contained in the 1996 act amending this section, see section 1 of chapter 16, Session Laws of Colorado 1996.

39-5-118. Failure to receive schedule - validity of valuation. No determination of the actual value of any taxable personal property made by the assessor shall be rendered invalid by reason of his failure to secure or receive the personal property schedule required to be completed and returned to him prior to his determination of such value.

Source: L. 64: R&RE, p. 702, § 1. C.R.S. 1963: § 137-5-18.

ANNOTATION

Statute did not unconstitutionally violate taxpayers' due process rights where the statutory scheme provided a protest procedure which the taxpayers choose to forego and the taxpayers own actions, not those of any governmental entity, have allegedly deprived the taxpayers of their property. Prop. Tax Adm'r v. Prod. Geophysical, 860 P.2d 514 (Colo. 1993).

The purpose of this section is to prevent an invalidation of an assessment solely on the ground that a taxpayer has failed to return a property tax schedule or that the assessor, for any other reason, has failed to receive the schedule. Prop. Tax Adm'r v. Bd. of Assessment Appeals, 837 P.2d 244 (Colo. App. 1992).

Challenges based on overvaluation. Although taxpayers challenged the amount of taxes assessed as excessive, this was not an "overvaluation" as the term is used in § 39-10-114 because, due to the taxpayers' wrongful inaction, the assessor's BIA valuations are presumed to be valid. Therefore, for purposes of § 39-10-114, the assessor's valuation cannot be considered an overvaluation, and § 39-10-114 may not be asserted by a taxpayer to avoid the provisions of this section and the protest procedure under § 39-5-122. Prop. Tax Adm'r v. Prod. Geophysical, 860 P.2d 514 (Colo. 1993).

39-5-119. Refusal to answer - court order. Whenever any person refuses to be interviewed by the assessor or his deputy or refuses to answer any pertinent questions relative to taxable property owned by him, or in his possession, or under his control, then, in the discretion of the district court having jurisdiction in the county and upon affidavit of the assessor or his deputy showing such refusal to be interviewed or to answer such questions, such person shall be cited before such court and shall be required by the court

then and there to submit to such interview and to answer such questions. All costs of such proceedings shall be assessed by the court against such person, and judgment and execution shall be entered therefor as in other civil cases.

Source: L. 64: R&RE, p. 703, § 1. C.R.S. 1963: § 137-5-19. L. 67: p. 949, § 16.

39-5-120. Tax schedules endorsed and filed - availability for inspection. All personal property schedules and exhibits or statements attached thereto returned to or secured by the assessor shall be endorsed with the name of the person whose taxable personal property is listed therein and shall be filed in either alphabetical or numerical order and retained for a period of six years, after which time they may be destroyed. Such schedules and accompanying exhibits or statements shall be considered private documents and shall be available on a confidential basis only to the assessor and the employees of his office, the treasurer and the employees of his office, the annual study contractor hired pursuant to section 39-1-104 (16) and his employees, the executive director of the department of revenue and the employees of his office, the administrator and the employees of his office, and the person whose taxable personal property is listed therein. Such exhibits or statements shall be available on a confidential basis to the board and the county board of equalization when information contained in such documents is pertinent to an appeal or protest.

Source: L. 64: R&RE, p. 703, § 1. C.R.S. 1963: § 137-5-20. L. 70: p. 389, § 1. L. 75: Entire section amended, p. 226, § 88, effective July 16. L. 76: Entire section amended, p. 761, § 22, effective January 1, 1977. L. 87: Entire section amended, p. 1417, § 2, effective March 13.

39-5-121. Notice of valuation - legislative declaration. (1) (a) No later than May 1 in each year, the assessor shall mail to each person who owns land or improvements a notice setting forth the valuation of such land or improvements. For agricultural property, the notice shall separately state the actual value of such land or improvements in the previous year, the actual value in the current year, and the amount of any adjustment in actual value. For all other property, the notice shall state the total actual value of such land and improvements together in the previous year, the total actual value in the current year, and the amount of any adjustment in total actual value. The notice shall not state the valuation for assessment of such land or improvements or combination of land and improvements. Based upon the classification of such taxable property, the notice shall also set forth either the ratio of valuation for assessment to be applied to said actual value of all taxable real property other than residential real property prior to the calculation of property taxes for the current year or the projected ratio of valuation for assessment to be applied to said actual value of residential real property prior to the calculation of property taxes for the current year and that any change or adjustment of the projected ratio of valuation for assessment for residential real property shall not constitute grounds for the protest or abatement of taxes. With the approval of the board of county commissioners, the assessor may include in the notice an estimate of the taxes that shall be owed for the current property tax year. If such estimate is included, the notice shall clearly state that the tax amount is merely an estimate based upon the best available information. The notice shall state, in bold-faced type, that the taxpayer has the right to protest any adjustment in valuation but not the estimate of taxes if such an estimate is included in the notice, the classification of the property that determines the assessment percentage to be applied, and the dates and places at which the assessor will hear such protest. Such notice shall also set forth the following: That, to preserve the taxpayer's right to protest, the taxpayer must notify the assessor either in writing or in person of the taxpayer's objection and protest; that such notice must be delivered, postmarked, or given in person no later than June 1; and that, after such date, the taxpayer's right to object and protest the adjustment in valuation is lost. The notice shall be mailed together with a form that, if completed by the taxpayer, allows the taxpayer to explain the basis for the taxpayer's valuation of the property. Such form may be completed by the taxpayer to initiate an appeal of the assessor's valuation. However, in accordance with

section 39-5-122 (2), completion of this form shall not constitute the exclusive means of appealing the assessor's valuation. For the years that intervene between changes in the level of value, if the difference between the actual value of such land or improvements in the previous year and the actual value of such land or improvements in the intervening year as set forth in such notice constitutes an increase in actual value of more than seventy-five percent, the assessor shall mail together with the notice an explanation of the reasons for such increase in actual value.

(b) (I) Commencing as provided in subparagraph (II) of this paragraph (b), the notice of valuation for the first year of each reassessment cycle that is mailed to each person who owns land or improvements pursuant to paragraph (a) of this subsection (1) shall include, in addition to the information specified in paragraph (a) of this subsection (1), an itemized listing of the land and improvements and the characteristics that are germane to the value of such land and improvements.

(II) In a county with a population in excess of fifty thousand people, the information specified in subparagraph (I) of this paragraph (b) shall be included in notices of valuation mailed on or after January 1, 2001. In a county with a population of twenty-five thousand people or more but not more than fifty thousand people, the information specified in subparagraph (I) of this paragraph (b) shall be included in notices of valuation mailed on or after January 1, 2003. In a county with a population of less than twenty-five thousand people, the information specified in subparagraph (I) of this paragraph (b) shall be included in notices of valuation mailed on or after January 1, 2005.

(1.2) A notice of valuation included with the tax bill shall fulfill the requirements of subsection (1) of this section. The general assembly hereby finds and declares that the notice procedure set forth in this subsection (1.2) facilitates the efficient and economic operation of local governments, consistent with the expressed purpose of section 20 of article X of the state constitution to reasonably restrain most the growth of government, and still fulfills the purposes of section 20 (8) (c) of said article X in the intervening year of each reassessment cycle when there is no change in value for the property in such year.

(1.5) (a) No later than June 15 in each year, the assessor shall mail to each person who owns taxable personal property a notice setting forth the valuation of the personal property. The notice shall state the actual value of such personal property in the previous year, the actual value in the current year, and the amount of any adjustment in actual value. The notice shall not state the valuation for assessment of the personal property. The notice shall also set forth the ratio of valuation for assessment to be applied to said actual value prior to the calculation of property taxes for the current year. With the approval of the board of county commissioners, the assessor may include in the notice an estimate of the taxes that shall be owed for the current property tax year. If such an estimate is included, the notice shall clearly state that the tax amount is merely an estimate based upon the best available information. The notice shall state, in bold-faced type, that the taxpayer has the right to protest any adjustment in valuation but not the estimate of taxes if such an estimate is included in the notice, and the dates and places at which the assessor will hear protests. The notice shall also set forth the following: To preserve the taxpayer's right to protest, the taxpayer must notify the assessor either by mail or in person of the taxpayer's objection and protest; that the notice must be postmarked or physically delivered no later than June 30; and that, after such date, the taxpayer's right to object and protest the adjustment in valuation is lost. The notice shall be mailed together with a form that, if completed by the taxpayer, allows the taxpayer to explain the basis for the taxpayer's valuation of the property. The form may be completed by the taxpayer to initiate an appeal of the assessor's valuation. However, in accordance with section 39-5-122 (2), completion of this form shall not constitute the exclusive means of appealing the assessor's valuation.

(b) Notwithstanding paragraph (a) of this subsection (1.5), for taxable personal property on oil and gas leaseholds or lands for which the operator has filed the statement required by section 39-7-101 (1), the assessor shall send the notice of valuation only to the operator, who shall accept it. The acceptance of the notice of valuation by the operator shall not be construed as an indication that the operator agrees with the amount of the actual value of the property stated in the notice or as obligating the operator to pay the tax attributable to property in which the operator has no ownership interest. Upon the written

request of the county treasurer, the operator shall submit to the treasurer a written statement containing the name and address of each person who has an ownership interest in the property. If the operator fails to submit the statement within thirty days after receiving the request, the operator shall pay a penalty to the treasurer in the amount of one hundred dollars or the amount of tax due on the property, whichever is less.

(1.7) Notwithstanding any other provision of law, a taxpayer may request to receive by electronic transmission the notices of valuation required by subsections (1) and (1.5) of this section. The taxpayer shall submit along with the request an electronic address to which the assessor may send future notices of valuation. The assessor, upon receipt of such request by a taxpayer to receive notices of valuation electronically, may send all future notices of valuation by electronic transmission to the electronic address supplied by the taxpayer; except that, if a taxpayer subsequently requests to cease the electronic transmission of such notices and requests to receive future notices of valuation by mail, the assessor shall comply with the request. Failure of a taxpayer to receive the electronic notice of valuation shall not preclude collection by the treasurer of the amount of taxes due from and payable by the taxpayer.

(2) (a) The assessor shall, no later than August 25 of each year, notify each taxing entity subject to the provisions of section 29-1-301, C.R.S., the division of local government, and the department of education of the total valuation for assessment of land and improvements within the entity and shall also report: The amount of the total valuation for assessment attributable to annexation or inclusion of additional land, and the improvements thereon, and personal property connected therewith, within the taxing entity for the preceding year; the amount attributable to new construction and personal property connected therewith, as defined by the administrator in manuals prepared pursuant to section 39-2-109 (1) (e), within the taxing entity for the preceding year; the amount attributable to increased volume of production for the preceding year by a producing mine if said mine is wholly or partially within the taxing entity and if such increase in volume of production causes an increase in the level of services provided by the taxing entity; and the amount attributable to previously legally exempt federal property that becomes taxable if such property causes an increase in the level of services provided by the taxing entity.

(b) In addition to the information specified in paragraph (a) of this subsection (2), the assessor shall, no later than August 25 of each year, notify each taxing entity except school districts of the total actual value of all real property within the taxing entity and the total actual value of all real property within the taxing entity from construction of taxable real property improvements, minus destruction of similar improvements, and additions to, minus deletions from, taxable real property, in accordance with the manner prescribed by the administrator in manuals prepared pursuant to section 39-2-109 (1) (e).

Source: L. 64: R&RE, p. 703, § 1. C.R.S. 1963: § 137-5-21. L. 67: p. 952, § 26. L. 76: Entire section amended, p. 687, § 4, effective July 1; (1) amended, p. 762, § 23, effective January 1, 1977. L. 81: (1) amended and (1.5) added, p. 1833, § 8, effective June 12; (2) amended, p. 1395, § 3, effective January 1, 1985. L. 83: (2) amended, p. 2073, § 4, effective October 13; (2) amended, p. 2052, § 24, effective October 14; (2) amended, pp. 2074, 2052, §§ 5, 25, effective January 1, 1985. L. 87: (2) amended, p. 1188, § 4, effective March 12. L. 88: (1) and (1.5) amended, p. 1298, § 5, effective April 29; (1) and (1.5) amended, p. 1285, § 17, effective May 23. L. 89: Entire section amended, p. 1453, § 9, effective June 7. L. 90: (1) amended, p. 1690, § 8, effective January 1, 1991. L. 92: (2) amended, p. 2182, § 54, effective June 2; (1) and (1.5) amended, p. 2207, § 4, effective January 1, 1993. L. 93: (2) amended, pp. 1282, 1688, §§ 2, 5, effective June 6. L. 96: (1), (1.5), and (2)(a) amended, p. 113, § 1, effective March 25; (1) and (1.5) amended and (1.2) added, p. 720, § 5, effective May 22. L. 99: (1) amended, p. 704, § 1, effective May 20. L. 2002: (1)(a) amended, p. 41, § 1, effective August 7. L. 2006: (1.5) amended, p. 33, § 1, effective March 13. L. 2008: (1.5)(a) amended, p. 948, § 3, effective August 5. L. 2010: (1.7) added, (HB 10-1117), ch. 195, p. 842, § 2, effective August 11.

Editor's note: Amendments to subsection (2) by House Bill 83-1580 and Senate Bill 83-414 were harmonized. Amendments to subsection (2) by Senate Bill 93-255 and House Bill 93-1321 were harmonized. Amendments to subsections (1) and (1.5) by House Bill 96-1131 and House Bill 96-1063 were harmonized.

ANNOTATION

Law reviews. For article, "Property Tax Assessments in Colorado", see 12 Colo. Law. 563 (1983). For article, "Appealing Property Tax Assessments", see 15 Colo. Law. 798 (1986).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Assessor's compliance with section condition precedent to tax levy. A compliance with this section by the county assessor is a condition precedent to the validity of a tax levy. *Goldsmith v. Standard Chem. Co.*, 77 Colo. 1, 233 P. 1110 (1925).

The assessor cannot ignore law and deprive taxpayer of rights. The omission of an assessor to give the statutory notice of a change in a tax schedule to a taxpayer is a denial of a substantial right; the assessor cannot, by ignoring the law, deprive the taxpayer of a right expressly fixed by these sections. *Goldsmith v. Standard Chem. Co.*, 77 Colo. 1, 233 P. 1110 (1925).

Proper discharge of duties is rebuttable presumption. A rebuttable presumption exists that public officials, including county assessors,

properly discharge their statutory duties. *Canyon Crest Villas S. v. Bd. of County Comm'rs*, 36 Colo. App. 409, 542 P.2d 395 (1975).

Section deemed mandatory when taxpayer denied hearing. The requirements of this section and §§ 39-8-103 and 39-8-104 are to be construed as mandatory only in specific instances where it is clearly shown on behalf of an aggrieved taxpayer, that, on account of noncompliance with these statutory requirements by the county officials charged therewith, the taxpayer has been deprived of an opportunity for a hearing, or other right important to him. *Northcutt v. Burton*, 127 Colo. 145, 254 P.2d 1013 (1953); *Rico Argentine Mining Co. v. Bd. of County Comm'rs*, 215 F. Supp. 208 (D. Colo. 1963).

No deprivation of relief by failure to file timely notice. The failure to provide timely notice of the correct amount of an increase in valuation does not deprive taxpayer of the right to administrative or judicial relief. *Modular Cmtys., Inc. v. McKnight*, 191 Colo. 101, 550 P.2d 866 (1976).

39-5-121.5. Valuation - inspection of data by taxpayers. At the written request of any taxpayer or any agent of such taxpayer and subject to such confidentiality requirements as provided by law, the assessor shall, within seven working days after receipt of said request, make available to the taxpayer or agent the data used by the assessor in determining the actual value of any property owned by such taxpayer. At the assessor's election, the assessor may either mail, fax, or send by electronic transmission to the address, phone number, or electronic address supplied by said taxpayer or agent such data. Such data shall include but shall not be limited to the data derived from the declarations filed pursuant to the provisions of article 14 of this title and confidential data, provided that such confidential data shall be presented in such a manner that the source cannot be identified. Upon receipt of such request, the assessor shall notify the taxpayer or agent of the estimated cost of providing such information, payment of which shall be made prior to providing such information. Upon providing such information, the assessor may include a bill for the reasonable cost above the estimated cost and up to the statutory maximum which shall be due and payable upon receipt by the taxpayer or agent.

Source: **L. 89:** Entire section added, p. 1466, § 33, effective June 7. **L. 90:** Entire section amended, p. 1700, § 29, effective June 9. **L. 2000:** Entire section amended, p. 1500, § 3, effective August 2.

39-5-122. Taxpayer's remedies to correct errors. (1) On or before May 1 of each year, the assessor shall give public notice in at least one issue of a newspaper published in his or her county that, beginning on the first working day after notices of adjusted valuation are mailed to taxpayers, the assessor will sit to hear all objections and protests concerning valuations of taxable real property determined by the assessor for the current year; that, for a taxpayer's objection and protest to be heard, notice must be given to the assessor; and that such notice must be postmarked, delivered, or given in person by June 1. The notice shall

also state that objections and protests concerning valuations of taxable personal property determined by the assessor for the current year will be heard commencing June 15; that, for a taxpayer's objection and protest to be heard, notice must be given to the assessor; and that such notice must be postmarked or physically delivered by June 30. If there is no such newspaper, then such notice shall be conspicuously posted in the offices of the assessor, the treasurer, and the county clerk and recorder, and in at least two other public places in the county seat. The assessor shall send news releases containing such notice to radio stations, television stations, and newspapers of general circulation in the county.

(2) If any person is of the opinion that his or her property has been valued too high, has been twice valued, or is exempt by law from taxation or that property has been erroneously assessed to such person, he or she may appear before the assessor and object, complete the form mailed with his or her notice of valuation pursuant to section 39-5-121 (1) or (1.5), or file a written letter of objection and protest by mail with the assessor's office before the last day specified in the notice, stating in general terms the reason for the objection and protest. Reasons for the objection and protest may include, but shall not be limited to, the installation and operation of surface equipment relating to oil and gas wells on agricultural land. Any change or adjustment of any ratio of valuation for assessment for residential real property pursuant to the provisions of section 39-1-104.2 shall not constitute grounds for an objection. If the form initiating an appeal or the written letter of objection and protest is filed by mail, it shall be presumed that it was received as of the day it was postmarked. If the form initiating an appeal or the written letter of objection and protest is hand-delivered, the date it was received by the assessor shall be stamped on the form or letter. As stated in the public notice given by the assessor pursuant to subsection (1) of this section, the taxpayer's notification to the assessor of his or her objection and protest to the adjustment in valuation must be delivered, postmarked, or given in person by June 1 in the case of real property. In the case of personal property, the notice must be postmarked or physically delivered by June 30. All such forms and letters received from protesters shall be presumed to be on time unless the assessor can present evidence to show otherwise. The county shall not prescribe the written form of objection and protest to be used. The protester shall have the opportunity on the days specified in the public notice to present his or her objection in writing or protest in person and be heard, whether or not there has been a change in valuation of such property from the previous year and whether or not any change is the result of a determination by the assessor for the current year or by the state board of equalization for the previous year. If the assessor finds any valuation to be erroneous or otherwise improper, the assessor shall correct the error. If the assessor declines to change any valuation that the assessor has determined, the assessor shall state his or her reasons in writing on the form described in section 39-8-106, shall insert the information otherwise required by the form, and shall mail two copies of the completed form to the person presenting the objection and protest so denied on or before the last regular working day of the assessor in June in the case of real property and on or before July 10 in the case of personal property; except that, if a county has made an election pursuant to section 39-5-122.7 (1), the assessor shall mail the copies on or before the last working day of the assessor in August in the case of both real and personal property.

(3) Any person whose objection and protest has been denied in writing by the assessor may appeal to the county board of equalization in the manner provided in article 8 of this title.

(4) The assessor shall continue his hearings from day to day until all objections and protests have been heard, but all such hearings shall be concluded by June 1 in the case of real property and July 5 in the case of personal property.

(5) (a) Any written statement given by any assessor which consists only of a denial of any objection and protest or which consists of a statement referring to compliance by the county with the requirements of valuation for assessment study shall not be sufficient to satisfy the requirements of subsection (2) of this section concerning the statement of reasons why an objection and protest is denied.

(b) Any information presented by the taxpayer regarding the value of his property shall be considered by the assessor in determining whether an adjustment in value is warranted.

Source: **L. 64:** R&RE, p. 703, § 1. **C.R.S. 1963:** § 137-5-22. **L. 73:** p. 1441, § 1. **L. 76:** (1), (2), and (4) amended, p. 762, § 24, effective January 1, 1977. **L. 77:** (2) amended, p. 1735, § 16, effective June 20. **L. 81:** (1), (2), and (4) amended, p. 1833, § 9, effective June 12. **L. 84:** (2) amended, p. 1000, § 1, effective March 5. **L. 88:** (1), (2), and (4) amended, p. 1300, § 6, effective April 29; (2) amended, p. 1287, § 18, effective May 23. **L. 89:** (1) and (2) amended, p. 1455, § 10, effective June 7. **L. 90:** (1), (2), and (4) amended and (5) added, p. 1691, § 9, effective January 1, 1991. **L. 92:** (2) amended, pp. 2209, 2213, §§ 5, 11, effective June 3. **L. 98:** (2) amended, p. 468, § 2, effective July 1. **L. 2002:** (1) and (2) amended, p. 42, § 2, effective August 7. **L. 2005:** (2) amended, p. 390, § 1, effective April 27. **L. 2008:** (1) and (2) amended, p. 949, § 4, effective August 5.

Editor's note: Amendments to subsection (2) by sections 5 and 11 of Senate Bill 92-50 were harmonized.

ANNOTATION

Law reviews. For article, "A Calendar of Tax Procedure in Colorado", see 6 Dicta 17 (July 1929). For article, "Some Aspects of Colorado Taxpayers' Remedies", see 23 Rocky Mt. L. Rev. 145 (1950). For article, "Property Tax Assessments in Colorado", see 12 Colo. Law. 563 (1983). For article, "Appealing Property Tax Assessments", see 15 Colo. Law. 798 (1986). For article, "Property Tax Litigation Before the Board of Assessment Appeals", see 35 Colo. Law. 87 (August 2006).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Statutes fixing meeting times deemed directory. Statutes fixing times for meetings and other functions of state officials are merely directory; the alleged noncompliance therewith on the part of said officials being matters nonprejudicial to complainants, they are not subject to attack on their part. *Citizens' Comm. for Fair Property Taxation v. Warner*, 127 Colo. 121, 254 P.2d 1005 (1953).

Steps in assessment process which are for benefit of taxpayer are mandatory. *Sperry Rand Corp. v. Bd. of County Comm'rs*, 31 Colo. App. 444, 503 P.2d 356 (1972).

The statutory requirements set forth in this section are mandatory only if an aggrieved taxpayer can show that noncompliance by county officials has deprived him of an opportunity for a hearing or other right which he might otherwise have had. *Modular Cmtys., Inc. v. McKnight*, 191 Colo. 101, 550 P.2d 866 (1976).

The provisions of § 39-8-106 and this section are remedial. *Kortz v. Ellingson*, 181 F. Supp. 857 (D. Colo. 1960).

Property tax valuation challenge. A taxpayer has the statutory right to challenge a property tax valuation for each tax year under the protest and adjustment procedure and possibly through de novo evidentiary proceedings before the board of assessment appeals. *Weingarten v. Bd. of Assessment Appeals*, 876 P.2d 118 (Colo. App. 1994).

Subsection (2) is unambiguous and authorizes an assessor to raise a property valuation after a taxpayer has filed a protest challenging the original valuation of the property. *San Miguel County Bd. of Equaliz. v. Telluride Co.*, 947 P.2d 1381 (Colo. 1997).

Aggrieved person must conform to provisions of section. This section gives to an aggrieved property owner a remedy which, in its absence, he would not have by prescribing a special procedure to which the person seeking to avail himself of its provisions must conform. It cannot by construction be extended to embrace cases not falling within its letter or spirit. *Bd. of County Comm'rs v. Denver Union Water Co.*, 32 Colo. 382, 76 P. 1060 (1904).

If an assessment is erroneous or excessive, the right to relief can be lost through failure to pursue the proper statutory remedy. *Citizens' Comm. for Fair Property Taxation v. Warner*, 127 Colo. 121, 254 P.2d 1005 (1953).

When burden on taxpayer to show illegal tax. Where a taxpayer claims a refund of taxes, paid under protest, for over-valuation in successive years, and where the facts show that the initial over-valuation based on the type of construction was neither illegal nor invalid, the taxpayer has burden, if proceeding under this section, of showing that the tax was illegally laid, erroneous in its entirety, and incapable of adjustment. *City & County of Denver v. Athmar Park Bldg. Co.*, 151 Colo. 424, 378 P.2d 638 (1963).

There is no need to characterize the tax paid as wholly illegal before claiming a refund. *Bd. of Assessment Appeals v. Benbrook*, 735 P.2d 860 (Colo. 1987) (overruling prior cases).

Administrative remedies to be exhausted before court action permissible. Exhaustion of administrative remedies, as provided by this section and § 39-8-106 is a requisite precedent to the maintenance of a court action. *Citizens' Comm. for Fair Property Taxation v. Warner*, 127 Colo. 121, 254 P.2d 1005 (1953).

The trial court is without jurisdiction to permit condominium owners to bring a class action challenging the assessor's routine increase in valuation of all condominiums upon their conversion where most owners had not pursued the remedy provided by this section. *Hoffman v. Bd. of Assessment Appeals*, 683 P.2d 783 (Colo. 1984).

Until relief under this section is sought, a taxpayer cannot appeal. *Bordner v. Bd. of County Comm'rs*, 92 Colo. 81, 18 P.2d 323 (1932).

A taxpayer is not entitled to bring C.R.C.P. 106 proceeding without first having filed its protest and pursued the proper administrative remedies. *Honeywell Info. Sys. v. Bd. of Assessment Appeals*, 654 P.2d 337 (Colo. App. 1982).

No deprivation of relief by failure to provide timely notice. The failure to provide timely notice of the correct amount of an increase in valuation does not deprive taxpayer of the right to administrative or judicial relief. *Modular Cmtys., Inc. v. McKnight*, 191 Colo. 101, 550 P.2d 866 (1976).

Provisions on abatement and refund of taxes apply to relief sought under this section. When a taxpayer who seeks administrative relief under this section prevails before the board of assessment appeals or the district court and such board or court's decision occurs after the challenged property tax is due, §§ 39-1-113 and 39-10-114 apply to the refund of taxes paid under § 39-8-109. *Bd. of Assessment Appeals v. Benbrook*, 735 P.2d 860 (Colo. 1987).

Because the term "erroneous valuation for assessment" in § 39-10-114 on abatement of taxes and "excessive valuation" under the protest and adjustment provisions of this section refer to the same process of assessment, the remedies available to the taxpayer regarding abatements apply to refunds ordered pursuant to this section. *Bd. of Assessment Appeals v. Benbrook*, 735 P.2d 860 (Colo. 1987).

No choice of remedies. The legislature's perpetuation of procedures and remedies for protest and adjustment separate and distinct from procedures and remedies for abatement and refund indicates that a taxpayer who seeks redress under one procedure cannot claim the remedy of the other procedure if the taxpayer ultimately prevails. *Gates Rubber Co. v. Bd. of Equalization*, 770 P.2d 1189 (Colo. 1989).

For the assessor's yearly property valuations of which the taxpayer has received notice, this section is the appropriate route of protest. Sections 39-1-113 and 39-10-114 provide a remedy for the abatement or refund of property taxes that cannot be challenged under this section. *Valley Country Club v. Bd. of Assessment Appeals*, 778 P.2d 285 (Colo. App. 1989), rev'd on other grounds, 792 P.2d 299 (Colo. 1990).

If a taxpayer receives no notice of a higher assessment and therefore is unable to file a timely protest under this section, the taxpayer may instead apply for abatement or refund under §§ 39-1-113 and 39-10-114. *Valley Country Club v. Bd. of Assessment Appeals*, 778 P.2d 285 (Colo. App. 1989), rev'd on other grounds, 792 P.2d 299 (Colo. 1990).

If appeal is directed at assessor and made prior to levy, it is correct to follow procedure specified in this section, rather than that for abatement and refund. *B.A. Leasing Corp. v. State Bd. of Equal.*, 745 P.2d 254 (Colo. App. 1987), aff'd sub nom. *Gates Rubber Co. v. Bd. of Equalization*, 770 P.2d 1189 (Colo. 1989).

Where property has been assessed improperly because of an error capable of adjustment, this section must be followed and the procedure in §§ 39-1-113 and 39-10-114 for abatement or refund is not available. *Schmidt-Tiago Const. Co. v. Prop. Tax Adm'r*, 687 P.2d 528 (Colo. App. 1984); *Alpenrose Unit Week Ass'n v. Bd. of Assessment Appeals*, 713 P.2d 932 (Colo. App. 1985).

Where assessor failed to give timely notice of property valuation, proper remedy is not to invalidate tax but to allow taxpayer to seek abatement of the tax increase pursuant to § 39-10-114. *Bea Kay Real Estate Corp. v. Aragon*, 782 P.2d 837 (Colo. App. 1989).

Burden of proof that assessment incorrect. A taxpayer who protests a property tax assessment bears the burden of proving, by a preponderance of the evidence, that the assessment is incorrect. *Honeywell Info. Sys. v. Bd. of Assessment Appeals*, 654 P.2d 337 (Colo. App. 1982).

Challenges based on overvaluation. Although taxpayers challenged the amount of taxes assessed as excessive, this was not an "overvaluation" as the term is used in § 39-10-114 because, due to the taxpayers' wrongful inaction, the assessor's BIA valuations are presumed to be valid. Therefore, for purposes of § 39-10-114, the assessor's valuation cannot be considered an overvaluation, and § 39-10-114 may not be asserted by a taxpayer to avoid the provisions of § 39-5-118 and the protest procedure under this section. *Prop. Tax Adm'r v. Prod. Geophysical*, 860 P.2d 514 (Colo. 1993).

Application of abatement procedure to personal property taxes. The protest procedure set forth in this section, as opposed to the abatement procedure set forth in § 39-10-114, is the exclusive method for challenging personal property BIA evaluations. *Prop. Tax Adm'r v. Prod. Geophysical*, 860 P.2d 514 (Colo. 1993); *Spectra Pub. v. Prop. Tax Adm'r*, 860 P.2d 520 (Colo. 1993).

Taxpayer may seek an abatement and refund under § 39-10-114 even though taxpayer initially protested valuation of the property under this section, because the taxpayer did not base its petition for abatement on the ground of

overvaluation but on the arbitrator's clerical error. *Landmark Petroleum v. County Comm'rs*, 870 P.2d 610 (Colo. App. 1993).

A party may seek review of only the total valuation for assessment and not of the component parts of that total. The statutes speak only of the right to appeal the value or the valuation assessment set by the assessor. Notably absent from the statutes is language that would permit a party to limit the scope of the protest by appealing only a portion or compo-

nent of the assessed value. *Cherne v. Bd. of Equaliz.*, 885 P.2d 258 (Colo. App. 1994).

Applied in *Laredo Hous. Apt., Ltd. v. Bd. of County Comm'rs*, 628 P.2d 135 (Colo. App. 1980); *Laredo Hous. Apts., Ltd. v. Bd. of Assessment Appeals*, 675 P.2d 23 (Colo. App. 1983); *Southern Cafeteria, Inc. v. Propy. Tax Adm'r*, 677 P.2d 362 (Colo. App. 1983); *Telluride Airport Auth. v. Bd. of Equalization*, 789 P.2d 201 (Colo. App. 1989); *Lucchesi v. State*, 807 P.2d 1185 (Colo. App. 1990).

39-5-122.1. Appeal from illegal increase in valuation of property resulting from order of state board. (Repealed)

Source: **L. 77:** Entire section added, p. 1736, § 17, effective June 20; entire section repealed, p. 1736, § 17, effective January 1, 1978.

39-5-122.5. Taxpayer's remedies - property tax credit for incorrect valuations used for property tax levied in 1987 for collection in 1988. (Repealed)

Source: **L. 88:** Entire section added, p. 1288, § 21, effective May 23. **L. 94:** (3) amended, p. 824, § 54, effective April 27. **L. 97:** Entire section repealed, p. 1032, § 71, effective August 6.

39-5-122.7. Alternate protest and appeal procedure for specified counties.

(1) The governing body of any county may, at the request of the assessor, elect to use an alternate protest and appeal procedure to determine objections and protests concerning valuations of taxable property. The election shall not be made unless the assessor has requested the use of the alternative protest and appeal procedure. The election shall be made on or before May 1 of each year and shall be effective for all objections and protests concerning valuations of taxable property for the year. The governing body of the county shall provide notice of the election to the board of assessment appeals and to the district court in such county.

(2) In the event that a county elects to follow an alternative protest and appeal procedure as authorized by subsection (1) of this section, the assessor shall issue any written determination regarding the objection and protest by the date specified in section 39-5-122 (2).

(3) For purposes of this section, "county" shall include a city and county.

Source: **L. 98:** Entire section added, p. 467, § 1, effective July 1. **L. 2005:** (1) and (2) amended, p. 391, § 2, effective April 27.

39-5-123. Abstract of assessment or amended abstract of assessment.

(1) (a) Upon conclusion of hearings by the county board of equalization, as provided in article 8 of this title, the assessor shall complete the assessment roll of all taxable property within the assessor's county, and, no later than August 25 in each year or no later than November 21 in each year in any county that has made an election pursuant to section 39-5-122.7, the assessor shall prepare therefrom three copies of the abstract of assessment and in person, and not by deputy, shall subscribe his or her name, under oath, to the following statement, which shall be a part of such abstract:

I,, the assessor of county, Colorado, do solemnly swear that in the assessment roll of such county I have listed and valued all taxable property located therein and that such property has been assessed for the current year in the manner prescribed by law and that the foregoing abstract of assessment is a true and correct compilation of each schedule.

.....

(b) Upon completion by the assessor of the abstract of assessment, the chairman of the board of county commissioners shall examine such abstract and shall sign the following statement, which shall be a part of such abstract:

I,, chairman of the county board of county commissioners, certify that the county board of equalization has concluded its hearings, pursuant to the provisions of article 8 of this title, that I have examined the abstract of assessment, and that all valuation changes ordered by the county board of equalization have been incorporated therein.

.....

(2) The assessor shall file two copies of the abstract of assessment with the administrator, and, appended thereto, the assessor shall also file the aggregate valuation for assessment of all taxable property in the county, each municipality, and each school district within the county, by classes and subclasses, on a form prescribed by the administrator.

(3) Along with the abstract of assessment, the assessor shall file with the property tax administrator information relating to the valuation for assessment for residential real property, including new construction, increased volume of mineral and oil and gas production, and any other data determined by the administrator as necessary to determine the valuation for assessment for such property.

Source: L. 64: R&RE, p. 704, § 1. C.R.S. 1963: § 137-5-23. L. 67: p. 949, § 17. L. 76: Entire section amended, p. 773, § 1, effective April 30. L. 88: (3) added, p. 1288, § 19, effective May 23. L. 89: (1) amended, p. 1457, § 11, effective June 7. L. 93: (1) and (2) amended, p. 1283, § 5, effective June 6. L. 2000: (1)(a) amended, p. 1500, § 4, effective August 2.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Failure to subscribe to assessment rolls does not invalidate assessment. This section, providing that the assessment rolls shall be authenticated by the assessor attaching a prescribed oath to the assessment book, does not mean that a failure to subscribe the oath invalidates the assessment, or that a tax deed is void because the assessment roll was not authenti-

cated by the assessor as required by this section. *Duggan v. McCullough*, 27 Colo. 43, 59 P. 743 (1899).

After assessment submitted, assessor's duties become ministerial. After county assessor has completed his assessment and submitted his assessment roll to the county board of equalization, his quasi-judicial functions end, and his duties thereafter to be performed are purely ministerial. *Bd. of County Comm'rs v. Love*, 172 Colo. 121, 470 P.2d 861 (1970).

39-5-124. Property tax administrator to examine abstract. (1) When the abstract of assessment has been subscribed and sworn to by the assessor and by the chairman of the board of county commissioners, the assessor shall transmit two copies thereof to the administrator and shall retain the third copy for endorsement of the tax warrant thereon.

(2) Upon receipt of such abstract, the administrator shall examine the same without delay and, if it is found correct as to form, shall certify such fact to the assessor, and such certification shall be conclusive evidence of the fact, time, and place of filing such abstract. If such abstract is found incorrect as to form, the administrator shall return the same to the assessor for correction.

Source: L. 64: R&RE, p. 705, § 1. C.R.S. 1963: § 137-5-24. L. 93: (1) amended, p. 1284, § 6, effective June 6.

39-5-125. Omission - correction of errors. (1) Except as otherwise provided in subsection (3) of this section, whenever it is discovered that any taxable property has been omitted from the assessment roll of any year or series of years, the assessor shall immediately determine the value of such omitted property and shall list the same on the

assessment roll of the year in which the discovery was made and shall notify the treasurer of any unpaid taxes on such property for prior years.

(2) Omissions and errors in the assessment roll, when it can be ascertained therefrom what was intended, may be supplied or corrected by the assessor at any time before the tax warrant is delivered to the treasurer or by the treasurer at any time after the tax warrant has come into his hands.

(3) If taxable personal property that has been omitted from the assessment roll of any year or series of years is discovered due to a property owner or an agent of a property owner who advertises for rent furnished residential real property providing information to the assessor pursuant to section 39-5-108.5 (2), the assessor shall not notify the treasurer of any unpaid taxes on the taxable personal property for prior years and the property owner or agent shall not be liable for any such unpaid taxes for prior years.

Source: L. 64: R&RE, p. 705, § 1. C.R.S. 1963: § 137-5-25. L. 2009: (1) amended and (3) added, (HB 09-1110), ch. 162, p. 700, § 2, effective August 5.

ANNOTATION

- I. General Consideration.
- II. Property Omitted from Rolls.
- III. Errors in Rolls.

I. GENERAL CONSIDERATION.

Annotator's note. The following annotations include cases decided under this section as it existed prior to its 1964 repeal and reenactment.

This section expressly authorizes assessor and treasurer to correct errors in the assessment roll at any time, before or after the treasurer receives the tax warrant. *Modular Cmty's., Inc. v. McKnight*, 191 Colo. 101, 550 P.2d 866 (1976); *RTV, L.L.C. v. Grandote Int'l Ltd.*, 937 P.2d 768 (Colo. App. 1996).

Treasurer making correction must exercise reason and sound judgment. *Haley v. Elliott*, 20 Colo. 379, 38 P. 771 (1894).

This section does not obviate the necessity of notice required by § 39-5-122. *Gale v. Statler*, 47 Colo. 72, 105 P. 858 (1909).

Applied in *Haley v. Elliot*, 20 Colo. 379, 38 P. 771 (1894); *Chase v. Boar of County Comm'rs*, 37 Colo. 268, 86 P. 1011 (1906); *City & County of Denver v. Pitcher*, 54 Colo. 203, 129 P. 1015 (1913); *San Luis Power & Water Co. v. Trujillo*, 93 Colo. 385, 26 P.2d 537 (1933).

II. PROPERTY OMITTED FROM ROLLS.

Assessor must account for omitted taxes and arrearages. The assessor has power and it is his duty, under this section, when it is discovered that certain special taxes upon particular property have been omitted from the assessment book, to place the same upon his book with all arrearages which should have been assessed in former years, notwithstanding the property had been regularly listed and the omission consisted only in failing to extend the special tax levy.

Aggers v. People ex rel. Town of Montclair, 20 Colo. 348, 38 P. 386 (1894).

List property omitted by owner. In the event of a failure by the owner to list his property, it is made the duty of the assessor to do so. *Bd. of County Comm'rs v. Yingling*, 14 Colo. App. 449, 60 P. 582 (1900).

Assessor has the authority to assess taxes retroactively on property previously omitted from the assessment rolls, including the "value of improvements" located on land. *Chew v. Bd. of Assmt. Appeals*, 673 P.2d 1028 (Colo. App. 1983); *RTV, L.L.C. v. Grandote Int'l Ltd.*, 937 P.2d 768 (Colo. App. 1996).

This section and § 39-10-101 (2)(a) authorize retroactive assessments of additional property taxes only against "omitted property" and not against "omitted value". *Cabot Petroleum Corp. v. Yuma County Bd. of Equaliz.*, 847 P.2d 152 (Colo. App. 1992), rev'd on other grounds, 856 P.2d 844 (Colo. 1993); *Jet Black, LLC v. Routt County Bd. of County Comm'rs*, 165 P.3d 744 (Colo. App. 2006).

This section does not authorize retroactive assessments against previously undervalued property, because such valuation increases do not involve omitted property. In *Stitches, Inc. v. Denver County Bd. of County Comm'rs*, 62 P.3d 1080 (Colo. App. 2002).

The value of previously omitted common area parcels could be added on a proportional basis to ownership parcels even though the ownership parcels had previously been assessed at a lower value. *Jet Black, LLC v. Routt County Bd. of County Comm'rs*, 165 P.3d 744 (Colo. App. 2006).

III. ERRORS IN ROLLS.

Dollar mark omitted before valuation figures may be supplied. Where in the copy of an assessment roll the dollar mark (\$) was omitted before the valuation figures, it is one of those

omissions or informalities which the assessor or treasurer is authorized to correct. *Haley v. Elliott*, 20 Colo. 379, 38 P. 771 (1894).

39-5-126. Wrongful return by assessor. Whenever any assessor willfully and knowingly omits any taxable property in his county from the assessment roll, or willfully and knowingly values any taxable property in his county contrary to the manner prescribed by law, and willfully and knowingly subscribes and swears to an abstract of assessment reflecting such omissions and containing such unlawful valuations, he is guilty of perjury in the second degree and, upon conviction thereof, shall be punished according to law.

Source: L. 64: R&RE, p. 705, § 1. C.R.S. 1963: § 137-5-26. L. 67: p. 950, § 18. L. 72: p. 570, § 52.

Cross references: For perjury in the second degree and the penalty therefor, see §§ 18-8-503 and 18-1.3-501.

39-5-127. Correction of assessments. Whenever the state board of equalization makes any change in the abstract of assessment of any county or orders an increase or decrease in the valuation of any class or subclass of property located therein, the assessor shall make the necessary changes in the abstract of assessment of the next succeeding taxable year required to carry out such order; except that, whenever the state board of equalization changes the valuation of any class or subclass of property pursuant to section 39-9-103 (7), the assessor shall make the necessary changes in the abstract of assessment of the current taxable year required to carry out such order.

Source: L. 64: R&RE, p. 705, § 1. C.R.S. 1963: § 137-5-27. L. 77: Entire section amended, p. 1755, § 1, effective July 23. L. 83: Entire section amended, p. 2092, § 1, effective September 23.

ANNOTATION

Applied in *Lamm v. Barber*, 192 Colo. 511, 565 P.2d 538 (1977).

39-5-128. Certification of valuation for assessment. (1) No later than August 25 of each year, the assessor shall certify to the department of education, to the clerk of each town and city, to the secretary of each school district, and to the secretary of each special district within the assessor's county the total valuation for assessment of all taxable property located within the territorial limits of each such town, city, school district, or special district and shall notify each such clerk, secretary, and board to officially certify the levy of such town, city, school district, or special district to the board of county commissioners no later than December 15. The assessor shall also certify to the secretary of each school district the actual value of the taxable property in the district.

(2) Repealed.

(3) If the valuation for assessment for all or part of any such political subdivision has been divided for an urban renewal area, pursuant to section 31-25-107 (9) (a), C.R.S., any certification under this section shall be based upon that portion of the valuation for assessment under subparagraph (I) of said section 31-25-107 (9) (a), C.R.S., so long as such division remains in effect.

Source: L. 64: R&RE, p. 705, § 1. C.R.S. 1963: § 137-5-28. L. 67: p. 950, § 19. L. 75: (3) added, p. 1278, § 6, effective July 16. L. 76: (1) amended, p. 687, § 5, effective July 1. L. 86: (1) amended, p. 1030, § 15, effective January 1, 1987. L. 87: (1) amended and (2) repealed, p. 1411, §§ 14, 15, effective April 22. L. 88: (1) amended, p. 1288, § 20,

effective May 23. **L. 89:** (1) amended, p. 1457, § 12, effective June 7. **L. 93:** (1) amended, p. 1689, § 6, effective June 6. **L. 94:** (1) amended, p. 807, § 10, effective April 27. **L. 96:** (1) amended, p. 115, § 2, effective March 25.

39-5-129. Delivery of tax warrant - public inspection. As soon as practicable after the requisite taxes for the year have been levied but in no event later than January 10 of each year, the assessor shall deliver the tax warrant under his hand and official seal to the treasurer, which shall be made readily available to the general public during the collection year in a convenient location in the courthouse. The assessor shall retain one or more true copies thereof, which shall be made readily available to the general public during the collection year in a convenient location in the courthouse. Such tax warrant shall set forth the assessment roll, reciting the persons in whose names taxable property in the county has been listed, the class of such taxable property and the valuation for assessment thereof, the several taxes levied against such valuation, and the amount of such taxes extended against each separate valuation. At the end of the warrant, the aggregate of all taxes levied shall be totaled, balanced, and prorated to the several funds of each levying authority, and the treasurer shall be commanded to collect all such taxes.

Source: **L. 64:** R&RE, p. 706, § 1. **C.R.S. 1963:** § 137-5-29. **L. 67:** p. 950, § 20. **L. 88:** Entire section amended, p. 1097, § 2, effective April 6. **L. 89:** Entire section amended, p. 1457, § 13, effective June 7.

ANNOTATION

Annotator's note. The following annotations include cases decided under this section as it existed prior to its 1964 repeal and reenactment.

This section is directory and not mandatory. To hold that all county tax collections are void because an assessor fails to deliver the tax list and warrant on the appointed day would in large measure emasculate the tax structure. *People ex rel. Dunbar v. Hively*, 140 Colo. 265, 344 P.2d 443 (1959).

Tax collector must have some authority or warrant for collection. All the authorities agree that the collector of taxes, by whatever title called, must have some authority or warrant for their collection; or, in lieu thereof, his acts are

trespasses. *City of Highlands v. Johnson*, 24 Colo. 371, 51 P. 1004 (1897).

When taxes due and payable. It was seemingly the intention of the general assembly to make all taxes due and payable from the time the tax list and warrant were delivered to the treasurer, and to fix the ultimate date of such delivery as of the first of January after the levy; from this date the treasurer was commanded to collect said taxes. *Cristler v. Beardsley*, 25 Colo. App. 369, 138 P. 68 (1914).

Applied in *Haley v. Elliott*, 20 Colo. 379, 38 P. 771 (1894); *Moore v. Gas Sec. Co.*, 278 F. 111 (8th Cir. 1921).

39-5-130. Informality not to invalidate. No informality in complying with the requirements of section 39-5-129 shall render any proceedings for the collection of taxes invalid. The assessor shall take the receipt of the treasurer for the tax warrant, and such warrant shall be full and complete authority for the treasurer to collect all taxes therein set forth.

Source: **L. 64:** R&RE, p. 706, § 1. **C.R.S. 1963:** § 137-5-30.

ANNOTATION

Annotator's note. The following annotations include cases decided under this section as it existed prior to its 1964 repeal and reenactment.

Technical objections, without merit, shall not interfere with collection of the public revenue, as the assessor or treasurer may correct any defect in form on the assessment list or tax roll. *Haley v. Elliott*, 20 Colo. 379, 38 P. 771 (1894).

Defective description of realty does not affect tax on personality. Where, in an assessment roll, there is a defective description of the realty, the validity of the tax against the personality is not necessarily affected. *Haley v. Elliott*, 20 Colo. 379, 38 P. 771 (1894).

This section does not obviate necessity of notice required by § 39-5-122. *Gale v. Statler*, 47 Colo. 72, 105 P. 858 (1909).

39-5-131. Certification and valuation of pollution control property. (Repealed)

Source: **L. 78:** Entire section added, p. 468, § 3, effective July 1. **L. 79:** (1), (3), (4), and (8) amended and (9) added, pp. 1455, 1456, §§ 2, 4, effective June 22. **L. 81:** (9) R&RE, p. 1872, § 6, effective June 29. **L. 88:** Entire section repealed, p. 1275, § 14, effective May 29.

39-5-132. Assessment and taxation of new construction. (1) The general assembly hereby finds and declares that it is a matter of statewide concern that revenues from property taxes on newly constructed buildings may need to be put to special use in order to accommodate the capital needs resulting from such new construction, especially to accommodate the capital needs of the public schools in this state. The general assembly further declares that it is essential that such revenue be available as soon as possible after the time such new construction is put to use. The general assembly further finds and declares that the board of county commissioners is the appropriate governmental unit to determine the extent of the growth within the county and the finding of severe growth impact shall be at the sole discretion of the board.

(2) (a) (I) (A) If the board of county commissioners determines that a county is becoming severely impacted by residential growth, the board of county commissioners shall make a finding of severe growth impact based upon the rate of increase in the county of the number of residential units being constructed within the county and an increase in pupil enrollment in school districts within the county such that at least one school district in the county meets the growth criteria described in sub-subparagraph (E) of this subparagraph (I), and other factors which indicate patterns of growth and growth impact, and shall, on or before January 1, resolve to implement the assessment and levy procedures required under this section. When a board of county commissioners makes such resolution, the provisions of this section shall apply countywide notwithstanding any law to the contrary. The board of county commissioners shall not make a finding of severe growth impact unless the number of residential units in the county will increase by over two percent during the county's current fiscal year. The board of county commissioners may negotiate with taxing authorities in the county to provide the costs of implementing the assessment and levy procedures required under this section. Notwithstanding any other provision of law to the contrary, any such taxing authority is hereby authorized to use moneys from its general fund to provide the costs specified in this subparagraph (I) and to deposit any moneys received as reimbursement pursuant to subsection (4) of this section into its general fund.

(B) Whenever construction occurs on any new taxable building within the boundaries of a county after January 1 of a given year, the assessor shall value the building on July 1 of that year, and the assessor shall add the valuation for assessment thereof to the abstract of assessment for such tax year, except that portion of the valuation for assessment as is excluded by paragraph (b) of this subsection (2). If the building is complete on July 1, such valuation for assessment shall be prorated at the same ratio as the number of months it is completed bears to the full year. Otherwise, the valuation added to the abstract shall be one-half of the difference between the valuation for assessment on January 1 and the valuation for assessment on July 1. For the purposes of this section, the total valuation for assessment of all newly constructed taxable buildings in a county as calculated pursuant to this subsection (2) shall be known as the "growth valuation for assessment" for such county. For purposes of this section, completion shall be considered to be when a certificate of occupancy is issued, when the building is ready for use, or after the final inspection, at the sole discretion of the county assessor. As used in this section, "building" means a roofed and walled real property improvement, and any uncertainty concerning whether or not a particular real property improvement is a building within the meaning of this definition shall be resolved by the property tax administrator.

(C) The assessor shall give written notification of the valuation of such newly constructed taxable building to the taxpayer. The notice shall, at a minimum, set forth the valuation on the assessment date, the prorated valuation of the newly constructed taxable building, and the total valuation for the property tax year. The notice shall also advise the taxpayer that he may protest and appeal the valuation of the newly constructed taxable

building at the same time and in the same manner, pursuant to section 39-5-122, as the total valuation of his property for the next property tax year may be appealed. If the taxpayer is successful in the protest or appeal, the amount in excess shall be refunded directly to the taxpayer by the county treasurer.

(D) In order to promote the most efficient administration of this section, each county or municipality shall ensure that any office or agency that received information relative to the state of completion of new taxable buildings shall promptly transmit such information to the county assessor. After January 1, 1987, the property tax administrator shall transmit to the assessor in August of each year both the assessed value of any newly constructed buildings owned by public utility companies and their state of completion on July 1 as well as their value on the previous January 1.

(E) The growth criteria for school districts for purposes of sub-subparagraph (A) of this subparagraph (I) shall be whether the commissioner of education or the commissioner's designee certifies that the pupil enrollment of the district for the past three years, as determined on October 1 of each year in accordance with former section 22-53-103 (7) or section 22-54-103 (10), has increased by three percent or more over each preceding year for those districts with pupil enrollments of at least one thousand pupils or by twenty-five or more pupils each year for those districts with pupil enrollments of less than one thousand pupils.

(II) All general property taxes which are levied on all other taxable real and personal property within a county in the tax year during which such construction occurs shall also be levied against the growth valuation for assessment of such county for collection the following year. Revenues raised from taxes levied on such growth valuation for assessment shall be credited to the county's capital growth fund, which each board of county commissioners shall establish, for use and distribution pursuant to subsection (4) of this section. The actual value and valuation for assessment of such newly constructed taxable building for subsequent years shall be the actual value and valuation for assessment as determined by the provisions of law other than this section, and tax revenues attributable thereto shall be distributed as provided by law without regard to this section.

(b) The provisions of this section shall not apply to that portion of the valuation for assessment of a newly constructed taxable building and the land underlying such building which is contained in the abstract of assessment on the assessment date.

(c) If the newly constructed taxable building is a residential unit, the assessment percentage to be applied to the land underlying such building shall be based on a residential classification of the land. If the land underlying such building was classified as vacant land, the classification shall be changed to residential on the abstract of assessment for the tax year in which the assessor added the valuation of the newly taxable residential building to the abstract for assessment.

(3) By August 25 of each year, the assessor shall notify the board of county commissioners of the amount of the growth valuation for assessment of the county for that tax year, the percentage that such growth valuation for assessment bears to the total valuation for assessment of the county for such tax year, the portion of such growth valuation for assessment that is attributable to newly constructed taxable buildings within the boundaries of each taxing authority in the county, and the percentage that such portion bears to the total valuation for assessment of each taxing authority in which such newly constructed taxable buildings are located.

(4) Upon collection of taxes on the growth valuation for assessment in the first year, the board of county commissioners shall reimburse the county general fund and the taxing authorities which contributed to the costs of implementing the procedures specified pursuant to this section and shall also pay into the county general fund the projected budgeted costs of implementation in this second year. The remaining moneys shall be distributed to the taxing authorities as next specified in this subsection (4). In the second and subsequent years that procedures are implemented pursuant to this section, the board of county commissioners, after depositing into the county general fund the projected budgeted costs of administering this section in the current year, shall distribute the moneys in the county's capital growth fund to the taxing authorities where the newly constructed taxable building is actually located in the same manner as all other property tax revenues collected on similar

taxable buildings are distributed; except that such moneys shall be used by the taxing authority for capital expenditures only and not for operating expenses. Every taxing authority receiving funds pursuant to this subsection (4) shall make capital expenditures so that they benefit the taxing authority within the county levying on the growth valuation for assessment pursuant to this section, unless such governing body finds a compelling reason for making expenditures so that they benefit the taxing authority within another county.

(5) Moneys received by a school district pursuant to this section shall be deposited in the district's capital reserve fund and shall not be included in calculating the amount of revenue which a district is entitled to receive from the property tax levy for the general fund of the district under the "Public School Finance Act of 1994", article 54 of title 22, C.R.S.

(6) When the board of county commissioners determines that a county is no longer being severely impacted by residential growth, the board of county commissioners shall so find and shall, on or before January 1, resolve to end implementation of the assessment and levy procedures required under this section.

(7) Nothing in this section shall be construed to affect tax increment financing as said financing is implemented pursuant to sections 31-25-107 (9) and 31-25-807 (3), C.R.S., nor the distribution of specific ownership taxes pursuant to section 42-3-107 (24), C.R.S.

Source: **L. 85:** Entire section added, p. 1223, § 1, effective July 1. **L. 88:** (5) amended, p. 824, § 37, effective May 24. **L. 90:** (2)(a)(I)(C), (2)(a)(I)(D), and (3) amended, p. 1693, § 10, effective June 9. **L. 94:** (2)(a)(I)(A) and (5) amended and (2)(a)(I)(E) added, pp. 807, 825, §§ 11, 55, effective April 27; (7) amended, p. 2568, § 87, effective January 1, 1995. **L. 96:** (3) amended, p. 17, § 3, effective February 22. **L. 2002:** (2)(c) added, p. 843, § 3, effective August 7. **L. 2005:** (7) amended, p. 1183, § 35, effective August 8.

39-5-133. 2011 modification of statutory definition of "agricultural land" - TABOR election - adjustment of district mill levy. (1) (a) The requirements of paragraph (b) of this subsection (1) shall only apply:

(I) To a district, as defined in section 20 (2) (b) of article X of the state constitution, that has not obtained voter approval to retain and spend revenues in excess of the fiscal year spending and property tax revenue limits imposed on the district by section 20 (7) (b) and (7) (c) of article X of the state constitution sufficient to allow the retention of all additional property tax revenues; and

(II) Where the district has additionally determined, on the basis of the best available information, that implementation of the modification of the definition of "agricultural land" required by House Bill 11-1146, enacted in 2011, will cause a net property tax revenue gain to the district sufficient to cause the district to exceed such limits.

(b) In the case of a district that meets the requirements specified in paragraph (a) of this subsection (1), the district may place before the voters of the district at any election at which such ballot issue may be placed on the ballot the question of whether the district may retain and spend revenues in excess of the limits imposed on the district by section 20 (7) (b) and (7) (c) of article X of the state constitution sufficient to allow the retention of the net property tax revenue gain to the district resulting from the implementation of the modification of the definition of "agricultural land" required by House Bill 11-1146, enacted in 2011.

(c) If a majority of the voters of the district fail to approve the ballot issue specified in paragraph (b) of this subsection (1), or if no ballot issue has been submitted to the voters, the district shall adjust the number of mills levied by the district to eliminate any net property tax revenue gain to the district resulting from the modification of the definition of "agricultural land" required by House Bill 11-1146, enacted in 2011.

(2) Notwithstanding any other provision of law, the provisions of subsection (1) of this section shall not apply to any district, regardless of whether or not it satisfies the requirements of paragraph (a) of subsection (1) of this section, that has determined, on the basis of the best available information, that implementation of the modification of the definition of "agricultural land" required by House Bill 11-1146, enacted in 2011, will not cause a net property tax revenue gain to the district.

Source: L. 2011: Entire section added, (HB 11-1146), ch. 166, p. 572, § 2, effective January 1, 2012.

PART 2

MOBILE HOMES

Editor's note: This part 2 was repealed in 1975 and was subsequently recreated and reenacted in 1977, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this part 2 prior to 1975, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

39-5-201. Legislative declaration. (1) The general assembly hereby finds and declares that the present method of taxation of mobile homes, the specific ownership tax, is inappropriate; that mobile homes are more properly taxed by a change from such method to an ad valorem method of taxation similar to the method of taxation of conventional housing.

(2) Uniform treatment of mobile homes is hereby declared to be an exclusive matter of statewide concern. No home rule city, city, county, or other local government shall impose a license or any other special fees on the ownership or occupancy of mobile homes that is not similarly imposed on conventional homes.

(3) Repealed.

Source: L. 77: Entire part RC&RE, p. 1740, § 3, effective January 1, 1978. **L. 78:** (3) added, p. 478, § 1, effective March 10. **L. 79:** (1) amended, p. 1640, § 51, effective July 19. **L. 83:** (3) repealed, p. 1485, § 11, effective April 22.

39-5-202. Taxation of mobile homes - effective date. Commencing January 1, 1978, mobile homes shall be subject to ad valorem taxation under the provisions of articles 1 to 9 of this title as if they were real property but shall be subject to the provisions of article 10 of this title concerning the collection of taxes as if they were personal property.

Source: L. 77: Entire part RC&RE, p. 1741, § 3, effective January 1, 1978.

39-5-203. Mobile homes - determination of value. (1) For the property tax year beginning January 1, 1983, and for each property tax year thereafter, the actual value of a mobile home shall be determined by the assessor in accordance with the provisions of sections 39-1-103 (5) and 39-1-104 (10.2) for the determination of the actual value of real property.

(2) Repealed.

(3) (a) The valuation for assessment of each mobile home shall be computed on the same basis as the valuation for assessment of all taxable property; except that mobile homes shall be exempt from property taxation while located on sales display lots of mobile home dealers and listed as inventories of merchandise by such mobile home dealers. It is the duty of the seller of a mobile home to provide to the buyer a tax certificate and an itemized list of household furnishings, as defined in section 39-3-102 and which are included in the selling price of the mobile home, at the time of sale.

(b) A person who knowingly fails to provide an itemized list of household furnishings as required by this subsection (3) commits a class 2 petty offense and, upon conviction thereof, shall be fined two hundred dollars; except that, upon conviction of a second or subsequent such offense, such person commits a class 3 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

Source: L. 77: Entire part RC&RE, p. 1741, § 3, effective January 1, 1978. **L. 78:** (3) amended, p. 478, § 2, effective March 10. **L. 80:** (2)(b) and (3) amended, p. 498, § 3, effective July 1. **L. 82:** (2)(a) amended, p. 557, § 1, effective January 1, 1983; (1) amended

and (2) repealed, pp. 555, 556, §§ 2, 3, effective January 1, 1984. **L. 83:** (1) R&RE and (2) repealed, pp. 1498, 1499, §§ 2, 3, effective April 12; (3) amended, p. 1484, § 9, effective April 22. **L. 87:** (1) amended, p. 1388, § 8, effective January 1, 1991. **L. 88:** (1) amended, p. 1274, § 9, effective January 1, 1993. **L. 89:** (3)(a) amended, p. 1484, § 9, effective April 23. **L. 94:** (3) amended, p. 707, § 15, effective April 19. **L. 95:** (1) amended, p. 9, § 4, effective March 9. **L. 2002:** (3)(b) amended, p. 1555, § 345, effective October 1.

Cross references: (1) For the power of county commissioners to levy taxes, see § 39-1-111; for household furnishings being exempt from taxation, see § 39-3-102.

(2) For the legislative declaration contained in the 2002 act amending subsection (3)(b), see section 1 of chapter 318, Session Laws of Colorado 2002.

39-5-204. Notification concerning mobile homes in a county for part of a year.

(1) (a) Any person who brings a mobile home into a county after the assessment date of any year shall immediately notify the assessor of the location of the mobile home within the county.

(b) Repealed.

(c) For property tax years commencing on or after January 1, 1999:

(I) The assessor shall list and value a mobile home brought into a county from another county in this state after the assessment date for any year as of the assessment date of the following year.

(II) The assessor shall list and value a mobile home brought into a county from outside this state after the assessment date at such proportion of its value for the full calendar year as the number of calendar months remaining in such year bears to twelve; but, if the mobile home is brought into the county from outside this state before the sixteenth day of any calendar month, such month shall be considered as a full calendar month, and, if the mobile home is brought into the county from outside this state on or after the sixteenth day of any calendar month, such month shall be disregarded.

Source: **L. 77:** Entire part RC&RE, p. 1741, § 3, effective January 1, 1978. **L. 98:** Entire section amended p. 439, § 1, effective August 5.

Editor's note: Subsection (1)(b)(II) provided for the repeal of subsection (1)(b), effective January 1, 2000. (See L. 98, p. 439.)

39-5-205. Relocation of a mobile home - collection of taxes. (1) Any person who intends to remove his or her mobile home from a county or from one location in a county to a new location in the same county shall notify the treasurer of this fact, and all property taxes levied or assessed on such mobile home shall thereupon become due and payable if the mobile home is to be removed from the county. Upon the request of the treasurer, the assessor shall certify to such person the valuation for assessment of the mobile home for the current year.

(2) Repealed.

(3) For property tax years commencing on or after January 1, 1999:

(a) If a mobile home located in a county on the assessment date is to be removed from the county to another county in this state before the next following assessment date, all property taxes levied or assessed on such mobile home shall, upon the mobile home owner providing notice of such removal to the treasurer pursuant to subsection (1) of this section, become due and payable for the current property tax year without proration.

(b) If a mobile home located in a county on the assessment date is to be removed from this state before the next following assessment date, all property taxes levied or assessed on such mobile home shall, upon the mobile home owner providing notice of such removal to the treasurer pursuant to subsection (1) of this section, become due and payable. The value to be placed on the property by the assessor pursuant to this paragraph (b) shall be such proportion of its value for the full calendar year as the number of calendar months in such year the mobile home was located in the original location bears to twelve; but, if the mobile

home is to be removed from its original location before the sixteenth day of any calendar month, such month shall be disregarded, and, if the mobile home is to be removed from its original location on or after the sixteenth day of any calendar month, such month shall be considered as a full calendar month.

(4) If the levy for the current year has not then been fixed and made, the levy for the previous year shall be used by the treasurer to determine the amount of taxes due pursuant to this section. At such time as the levy for the current year has been fixed and made, the amount of any taxes collected on the property in excess of the amount correctly due and payable shall be refunded by the treasurer to the owner of the property forthwith; but, in all cases where the amount of taxes so collected is less than the amount correctly due and payable, the amount uncollected shall be considered an erroneous assessment and shall be reported with other erroneous assessments in the manner prescribed by law.

Source: L. 77: Entire part RC&RE, p. 1741, § 3, effective January 1, 1978. L. 91: Entire section amended, p. 1697, § 7, effective July 1. L. 98: Entire section amended, p. 440, § 2, effective August 5.

Editor’s note: Subsection (2)(b) provided for the repeal of subsection (2), effective January 1, 2000. (See L. 98, p. 440.)

39-5-206. Payments to counties, cities, towns, and special districts in lieu of taxes for calendar year 1978. (Repealed)

Source: L. 77: Entire part RC&RE, p. 1741, § 3, effective January 1, 1978. L. 79: Entire section repealed, p. 1641, § 52, effective July 19.

ARTICLE 6

Valuation of Mines

Editor’s note: This article was repealed and reenacted in 1964 and was subsequently repealed and reenacted in 1965, resulting in the addition, relocation, or elimination of sections as well as subject matter. For amendments to this article prior to 1965, consult the Colorado statutory research explanatory note beginning on page vii in the front of this volume and the editor’s note before the article 1 heading.

39-6-101.	Definitions.	39-6-111.	Valuation of mines other than producing mines.
39-6-102.	Abstract and map of mining claims. (Repealed)	39-6-111.5.	Calendar for notice of valuation and appeals for mines.
39-6-103.	Listing of mining claims and mines.	39-6-112.	Valuation of tunnels.
39-6-104.	Classification of mines.	39-6-113.	Mine in more than one county.
39-6-105.	Producing mines defined.	39-6-114.	Mines and tunnels in more than one subdivision of a county.
39-6-106.	Valuation for assessment of producing mines.	39-6-115.	Collection.
39-6-107.	Valuation of improvements - machinery.	39-6-116.	Nonproducing unpatented mining claims - definitions.
39-6-108.	Failure to file statement.	39-6-117.	County boards of equalization - authority.
39-6-109.	Assessor to examine books - records.		
39-6-110.	False statements - penalty.		

39-6-101. Definitions. As used in this article, unless the context otherwise requires:

(1) “Mine” means one or more mining claims or acres of other land, including all excavations therein from which ores, metals, or mineral substances of every kind are removed, except drilled wells producing sulfur and oil, gas, and other liquid or gaseous hydrocarbons, and all mining improvements within such excavations, together with all rights and privileges thereunto appertaining.

(2) "Mining claims" means lode, placer, millsite, and tunnelsite claims, whether entered for patent, patented, or unpatented, regardless of size or shape.

(3) "Ore" includes, without limitation, metallic and nonmetallic mineral substances of every kind, except those specifically excluded under section 39-6-104.

(4) "Other land" means any parcel of real property which is not a mining claim.

Source: L. 65: R&RE, p. 1101, § 1. C.R.S. 1963: § 137-6-1. L. 85: (4) added, p. 1211, § 5, effective May 9.

39-6-102. Abstract and map of mining claims. (Repealed)

Source: L. 65: R&RE, p. 1101, § 1. C.R.S. 1963: § 137-6-1. L. 93: Entire section repealed, p. 440, § 7, effective July 1.

39-6-103. Listing of mining claims and mines. (1) The assessor shall list all mining claims and mines located within his county on the assessment date, including for each claim the name of the lode, placer, millsite, or tunnelsite, the United States mineral survey number, if any, the name of the mining district in which such claim is located, and the number of acres contained in such claim. If a claim is not patented, the numbers of the book and page at which the location of such claim is recorded in the county records shall be used in place of the United States mineral survey number. If two or more mining claims are included in one patent with one United States survey number, the assessor shall list together such mining claims with the one survey number and the total number of acres contained therein. In listing mining claims, abbreviations of words and figures may be used. If other land is part of such mine, then the numbers of the book and page at which the conveyance deed is recorded on the legal description of such other land shall be used in place of the United States mineral survey number.

(2) Whenever, to the knowledge of the assessor, contiguous mining claims are worked or operated through or by means of the same shafts, tunnels, or other openings, they shall be listed as one unit; and whenever, to the knowledge of the assessor, contiguous placer claims are worked or operated by means of the same ditch or other works, they shall be listed as one unit, including such ditch or other works; and whenever, to the knowledge of the assessor, contiguous other land is used in the same manner as the claims referred to in this subsection (2), it shall also be listed as one unit.

(3) The mining property of a mine shall include mining claims and all other lands and interests therein, whether owned by federal, state, or lesser governmental subdivisions or otherwise and whether owned in fee or held by discovery and location or under easement, lease, license, or other arrangement with the owner thereof, unless otherwise provided for in this article.

Source: L. 65: R&RE, p. 1102, § 1. C.R.S. 1963: § 137-6-2. L. 85: (1) and (2) amended, p. 1211, § 6, effective May 9.

39-6-104. Classification of mines. All mines, except mines worked or operated primarily for coal, asphaltum, rock, limestone, dolomite, or other stone products, sand, gravel, clay, or earths, shall, for the purpose of valuation for assessment, be divided into two classes: Producing and nonproducing.

Source: L. 65: R&RE, p. 1102, § 1. C.R.S. 1963: § 137-6-3.

ANNOTATION

Annotator's note. The following annotations include cases decided under this section as it existed prior to its 1964 repeal and reenactment.

Classification of property for taxation permissible. So long as classification is based upon the nature of property justifying it, there is noth-

ing to forbid legislative classification for the purposes of taxation or to prevent the fixing of valuation of different classes by different methods, provided that, by the method prescribed for a particular class of property, the burden of taxation is uniformly imposed upon that class, is

just and equitable, and does not exempt it from bearing its fair proportion of the burden of taxation, as compared with other classes of property. In re House Bill No. 270, 9 Colo. 635, 21 P. 476 (1886); Foster v. Hart Consol. Mining Co., 52 Colo. 459, 122 P. 48 (1912).

39-6-105. Producing mines defined. All mines whose gross proceeds during the preceding calendar year have exceeded the amount of five thousand dollars shall be classified as producing mines, and all others shall be classified as nonproducing mines. Mines shall be classified in the manner provided for in this article regardless of the processing method, the ultimate use, or the consumption of the ores or minerals for which they are primarily worked or operated.

Source: L. 65: R&RE, p. 1102, § 1. C.R.S. 1963: § 137-6-4.

39-6-106. Valuation for assessment of producing mines. (1) Every person owning or operating any mine classified as a producing mine shall, no later than April 15 of each year, prepare, sign under the penalty of perjury in the second degree, and file with the assessor of the county wherein such mine is located a statement showing:

(a) The name of such mine and a list of mining claims and any other lands comprising the mining property of such mine, together with the total number of acres contained in each claim or parcel so listed;

(b) The name of the owner thereof, together with the name of the operator thereof, and the address of each;

(c) The total number of acres contained in such mine and, if such mine is located in more than one county, the total number of acres contained in such mine in each county;

(d) The number of tons of ore extracted therefrom during the calendar year immediately preceding and, if the value of the products derived from the ore is used in determining gross value, the number of tons, pounds, or ounces of products derived from the ore;

(e) The gross value from production of the ore extracted during said calendar year, which means and includes the amount for which ore or the first salable products derived therefrom were or could be sold by the owner or operator of a mine, as determined using actual gross selling prices;

(f) The costs of extracting such ore, excluding the compensation of any officer or agents not actively and continuously engaged in or about the mine;

(g) The costs of treatment, reduction, transportation, and sale of such ore or the first salable products derived therefrom;

(h) The gross proceeds from production of such ore, which means and includes the value of the ore immediately after extraction, which value may be determined by deducting from gross value all costs of treatment, reduction, transportation, and sale of such ore or the first salable products derived therefrom;

(i) The net proceeds from production of such ore, which means and includes the amount determined by deducting from the gross proceeds all costs of extracting such ore.

(1.4) (a) The owner or operator of a producing mine may request permission to state an average figure for the items required by paragraphs (d) to (i) of subsection (1) of this section based on any three-year, five-year, or ten-year period immediately preceding January 1 of the year in which the statement must be filed. The same reporting method shall be used for all annual statements filed in a single year pertaining to a particular mine.

(b) (I) The owner or operator may make an initial request pursuant to this subsection (1.4) by filing the request with the board of county commissioners of each county in which the mine is located at least forty-five days prior to the reporting date specified in the introductory portion to subsection (1) of this section and attaching a copy of the request to the annual statement filed pursuant to subsection (1) of this section with the county assessor of each county in which the mine is located.

(II) The owner or operator may make subsequent changes in the reporting method pursuant to this subsection (1.4) by filing a request for a change in the reporting method

with the board of county commissioners and the county assessor of every county in which the mine is located at least forty-five days prior to the reporting date specified in the introductory portion to subsection (1) of this section.

(III) The board of county commissioners of each county which receives a request pursuant to this subsection (1.4) shall approve or deny the request at least thirty days prior to the reporting date specified in the introductory portion to subsection (1) of this section. Failure of a board of county commissioners to approve or deny the request within the thirty days shall be deemed an approval of the request.

(c) Once an owner or operator has made the initial election allowed by this subsection (1.4), the owner or operator shall file all subsequent annual statements pursuant to subsection (1) of this section using the same reporting method. The owner or operator shall not alter the reporting method until the board of county commissioners for every county in which the mine is located authorizes the use of the alternate method.

(d) The fact that authorization to alter the reporting method has not been received from all or any of the boards of county commissioners for the counties in which the mine is located shall not relieve the owner or operator from the obligation to file the annual statement pursuant to subsection (1) of this section with all counties in which the mine is located.

(1.7) As used in subsection (1) of this section, unless the context otherwise requires:

(a) (I) "Costs" means those costs directly attributable to the operation of the producing mine and to the treatment, reduction, transportation, or sale of the ore and includes, but is not limited to, allocation of:

(A) The costs of capital assets, which only include those expenditures listed on the fixed asset records of the mine;

(B) Preproduction development costs amortized over the life of the mine; and

(C) Off-site costs directly attributable to the operation of the producing mine or to the treatment, reduction, transportation, or sale of the ore; however, in no event shall off-site costs include compensation of any officer or agent not actively and continuously engaged in or about the mine.

(II) Allocation of the costs of capital assets pursuant to this paragraph (a) shall be done in accordance with generally accepted accounting principles. No change in the allocation method may be made without the prior approval of the county boards of equalization in all counties in which the mine is located.

(b) "Costs" does not include:

(I) Any amounts designated as profit or margin which are attributable to any part of the treatment, reduction, transportation, or sale of the ore; or

(II) Any amounts which have been or could have been deducted previously as part of the valuation of the producing mine pursuant to this section.

(2) On the basis of the information contained in such statement, the assessor shall value such mine for assessment at an amount equal to twenty-five percent of the gross proceeds, but if the net proceeds exceed twenty-five percent of the gross proceeds, then such mine shall be valued for assessment at the amount of such net proceeds.

(3) If any mining claim or other land is owned by the same person operating a producing mine which is contiguous to said claim and if, during the preceding calendar year, ore was actually extracted from said claim or other land or transported through such claim or other land by cut or tunnel or if any phase of the operation of said producing mines was conducted on such claim or other land, then such claim or other land shall be deemed to be a part of such producing mine and assessed therewith. All other claims or other land under the same ownership shall be valued in the same manner as other real property, on an acreage basis, regardless of surface contiguity.

(4) If any mining claim comprising part of the mining property of a producing mine is not patented or entered for patent, then the possessory interest therein shall be the subject of taxation.

(5) Any increase in the valuation of a producing mine shall constitute an addition to taxable real property for purposes of the definition of "local growth" contained in section 20 (2) (g) of article X of the state constitution.

(6) This section shall apply to and affect only the valuation of producing mines pursuant to this article.

Source: L. 65: R&RE, p. 1103, § 1. C.R.S. 1963: § 137-6-5. L. 72: p. 570, § 53. L. 85: (3) amended, p. 1212, § 7, effective May 9. L. 94: (1)(c) to (1)(e), (1)(g), and (1)(h) amended and (1.4), (1.7), (5), and (6) added, p. 1203, § 1, effective May 19. L. 2000: (1.4)(a) amended, p. 671, § 1, effective August 2.

Cross references: For perjury in the second degree and the penalty therefor, see §§ 18-8-503 and 18-1.3-501.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

This section is constitutional. Tallon v. Vin-dicator Consol. Gold Mining Co., 59 Colo. 316, 149 P. 108 (1915).

Valuation set by assessor presumed to be right. The power to determine the valuation of the mining property for taxation is lodged in the assessor; and, when he has acted and determined the value, he is presumed to be right. Standard Chem. Co. v. Curtis, 77 Colo. 10, 233 P. 1112 (1925).

Thus, burden of proof is on taxpayer to establish allegation of excessive assessment. Standard Chem. Co. v. Curtis, 77 Colo. 10, 233 P. 1112 (1925).

Ore mined by lessees becomes property of lessees. City & County of Denver v. Sec. Life & Accident Co., 173 Colo. 248, 477 P.2d 369 (1970).

Tax levied by this section levied on posses-sory right. The tax under this section is not laid

alone on a producing mine or mining claim, but also may be upon the possessory rights therein. Rummel v. Musgrave, 142 Colo. 249, 350 P.2d 825, appeal dismissed, 364 U.S. 293, 81 S. Ct. 105, 5 L. Ed.2d 83 (1960).

Thus, lessee of federal government may be taxed on his mining rights. Under this section, the possessory and leasehold rights of private citizens in uranium claims on lands of the United States may legally be assessed by the state, though title to the lands on which the claims are located is in the United States and is part of the public lands. Rummel v. Musgrave, 142 Colo. 249, 350 P.2d 825, appeal dismissed, 364 U.S. 293, 81 S. Ct. 105, 5 L. Ed.2d 83 (1960).

Margin allocation cannot be deducted as part of the costs of treatment, reduction, transportation, and sale of ore pursuant to this section. Huddleston v. Grand County Bd. of Equaliz., 913 P.2d 15 (Colo. 1996).

39-6-107. Valuation of improvements - machinery. All machinery and equipment and personal property shall be listed on a personal property schedule which shall be submitted as set forth in section 39-5-107 and valued for assessment by the assessor. Improvements, except mining improvements within a mine excavation, shall be listed separately and valued for assessment by the assessor.

Source: L. 65: R&RE, p. 1104, § 1. C.R.S. 1963: § 137-6-6. L. 94: Entire section amended, p. 1206, § 2, effective May 19.

ANNOTATION

Machinery, equipment, personal property, and above-the-ground improvements are to be valued pursuant to this section and not deducted as a cost in calculating gross proceeds or net proceeds pursuant to § 39-6-106. Amax v.

Grand County Bd. of Equaliz., 892 P.2d 409 (Colo. App. 1994), rev'd on other grounds sub nom. Huddleston v. Grand County Bd. of Equaliz., 913 P.2d 15 (Colo. 1996).

39-6-108. Failure to file statement. If any person owning, operating, or managing any producing mine fails or refuses to prepare and file the statement required in section 39-6-106 or 39-6-113, or both, then the assessor shall list such property and shall value the same for assessment on the basis of the best information available to and obtainable by him.

Source: L. 65: R&RE, p. 1104, § 1. C.R.S. 1963: § 137-6-7.

39-6-109. Assessor to examine books - records. (1) The assessor has the authority and right at any time to examine the books, accounts, and records of any person owning, managing, or operating a producing mine in order to verify the statement filed by such person, and, if from such examination the assessor finds such statement or any material part thereof to be willfully false or misleading, the assessor shall proceed to value such producing mine for assessment as though no statement had been filed.

(2) Upon the request of the assessor, the owner or operator of a producing mine shall provide to the assessor all documentation supporting the amounts reported on the statement filed by such owner or operator.

(3) The division of property taxation shall set forth guidelines for the implementation of this section.

Source: L. 65: R&RE, p. 1104, § 1. C.R.S. 1963: § 137-6-8. L. 94: Entire section amended, p. 1206, § 3, effective May 19.

39-6-110. False statements - penalty. If any person required to file such statements willfully and knowingly subscribes to any false statement contained therein, he is guilty of perjury in the second degree and upon conviction shall be punished according to law.

Source: L. 65: R&RE, p. 1104, § 1. C.R.S. 1963: § 137-6-9. L. 72: p. 570, § 54.

Cross references: For perjury in the second degree and the penalty therefor, see §§ 18-8-503 and 18-1.3-501.

39-6-111. Valuation of mines other than producing mines. (1) Mines excepted from the provisions of section 39-6-104 shall be valued for assessment in the same manner as other real property.

(2) All mines which are classified as nonproducing mines shall be valued for assessment in the same manner as other real property.

(3) Such valuation shall be determined under this section by the assessing officer only upon preponderant evidence shown by such officer that the cost approach, market approach, and income approach result in uniform and just and equal valuation.

Source: L. 65: R&RE, p. 1105, § 1. C.R.S. 1963: § 137-6-10. L. 70: p. 392, § 1. L. 85: (2) amended and (3) added, p. 1213, § 9, effective May 9.

ANNOTATION

Assessor was required to give appropriate consideration to the cost, market, and income approaches to appraisal when valuing a non-producing mine undergoing reclamation that

could not be classified as agricultural land. Hepp v. Boulder County Assessor, 113 P.3d 1268 (Colo. App. 2005).

39-6-111.5. Calendar for notice of valuation and appeals for mines. Notwithstanding any other provision, all producing and nonproducing mines valued pursuant to this article shall follow the schedule for personal property set forth in this title regarding notices of valuation and appeals of valuation.

Source: L. 2000: Entire section added, p. 1501, § 5, effective August 2.

39-6-112. Valuation of tunnels. (1) A tunnel excavated for the mere purpose of exploration and discovery of mines on the public domain shall be deemed to be real property and shall be listed and valued for assessment by the name thereof unless it becomes a part of a producing mine, in which case it shall be considered a parcel thereof.

A tunnel excavated for the drainage of, or the exploration of, or for giving access to the mines of those excavating such tunnel shall be deemed an appurtenance to such mines. A tunnel excavated for the drainage of, or the operation of, or for giving access to mines of persons other than those excavating such tunnel shall be deemed real property and shall be listed and valued for assessment by the name thereof.

(2) Whenever any such tunnel not appurtenant to or a parcel of a mine is situated partly in one county and partly in another county or counties or in lesser political subdivisions, the valuation thereof shall be apportioned between such counties by allocating the total value thereof between such counties or lesser political subdivisions in the proportion that the length of the center line thereof within each such county or lesser political subdivision bears to the total length thereof.

Source: L. 65: R&RE, p. 1105, § 1. C.R.S. 1963: § 137-6-11.

39-6-113. Mine in more than one county. (1) (a) Whenever a mine is situated partly in one county and partly in another county or counties or in lesser political subdivisions, a copy of the statement provided for in section 39-6-106, together with a copy of a list of all machinery and equipment located within the mine, if the mine is a producing mine, shall be filed with the assessor of each such county. Any such producing mine shall be valued for assessment in accordance with the provisions of section 39-6-106 (2) at an amount agreed upon by the assessors of such counties, and, in the case of any appeal of a protest of such valuation in either or both counties, the county boards of equalization of such counties shall confer and attempt to reach agreement on the valuation.

(b) If the mine is not a producing mine, all machinery and equipment located within the mine shall nevertheless be valued at an amount agreed upon by the assessors of such counties and apportioned between such counties by allocating the total value thereof between such counties or lesser political subdivisions in the proportion that the acreage of all the mining property of the mine, determined as provided for in sections 39-6-103 and 39-6-106, within such county or lesser political subdivision bears to the total acreage thereof as so determined, as if the mine were itself a producing mine.

(2) Whenever any producing mine, worked or operated by means of an integrated mining system and comprised of consolidated mining property, is situated partly in one county and partly in another county or counties or in lesser political subdivisions, the valuation thereof and of all machinery and equipment located within or upon the mine shall be apportioned between such counties or lesser political subdivisions in the proportion that the acreage of all the mining property of the mine, determined as provided for in sections 39-6-103 and 39-6-106, within such county or lesser political subdivision bears to the total acreage thereof as so determined. The assessor of each county shall list and value for assessment the portion of such mine which is situated in such county at the amount determined for such portion by such apportionment, and taxes levied on such valuation for assessment by the board of county commissioners of such county shall be collected by the treasurer of such county as provided by law.

(3) Where a mine is situated partly in one county and partly in another county or counties or in lesser political subdivisions, the owner, operator, or manager thereof shall, no later than April 15 of each year, prepare and file with the assessor of each such county a statement showing the number of acres within each such county contained in the lands comprising the mining property of the mine, determined as provided for in sections 39-6-103 and 39-6-106, but the statement need not be filed if no changes have occurred since such a statement was filed.

(4) (a) Nothing in subsection (3) of this section shall be construed to require the owner, operator, or manager of a mine to file an additional statement if the statement filed pursuant to section 39-6-106 sets forth the number of acres of the mine in each county.

(b) Nothing in subsection (3) of this section shall be construed to relieve the owner, operator, or manager of a mine from any reporting responsibilities imposed under section 39-6-106, including the required contents of the statement filed with the assessor.

Source: **L. 65:** R&RE, p. 1105, § 1. **C.R.S. 1963:** § 137-6-12. **L. 92:** (1) amended, p. 971, § 14, effective June 1. **L. 93:** (1)(b), (2), and (3) amended, p. 441, § 10, effective July 1. **L. 94:** (3) amended and (4) added, p. 1206, § 4, effective May 19.

39-6-114. Mines and tunnels in more than one subdivision of a county. Whenever any mine or tunnel is situated partly in one lesser political subdivision of a county and partly in another such subdivision of the same county, the assessor of the county shall apportion the value thereof between such lesser political subdivisions in the manner provided for in sections 39-6-112 and 39-6-113.

Source: **L. 65:** R&RE, p. 1106, § 1. **C.R.S. 1963:** § 137-6-13.

39-6-115. Collection. Beginning January 1, 1980, when taxes on mines and mining claims are due, such taxes shall be a debt due from the owner or user and shall be recoverable by the treasurer by direct action in debt. The treasurer may also collect such debt as if the property were personal property.

Source: **L. 79:** Entire section added, p. 1418, § 1, effective April 25.

39-6-116. Nonproducing unpatented mining claims - definitions. “Unpatented mining claims”, as used in section 3 (1) (b) of article X of the state constitution, includes mining claims located under the federal mining laws, 30 U.S.C. sec. 22 et seq., for which a patent has not been issued; and such term also includes leasehold interests in real property obtained under the federal “Mineral Lands Leasing Act of 1920”, 30 U.S.C. sec. 181 et seq.

Source: **L. 89:** Entire section added, p. 1495, § 1, effective May 1.

39-6-117. County boards of equalization - authority. Nothing in this article shall be construed to affect the authority of county boards of equalization to raise, lower, or adjust any valuation for assessment appearing in the assessment roll as provided in section 39-8-102 (1).

Source: **L. 94:** Entire section added, p. 1207, § 5, effective May 19.

ARTICLE 7

Valuation of Oil and Gas Leaseholds and Lands

Editor’s note: This article was repealed and reenacted in 1964. For historical information concerning the repeal and reenactment, see the editor’s note before the article 1 heading.

Law reviews: For article, “Implied Covenants in Oil and Gas Leases”, see 14 Colo. Law. 1216 (1985); for article, “Delinquent Oil and Gas Ad Valorem Taxes: Protecting Property Interests”, see 16 Colo. Law. 798 (1987).

39-7-101.	Statement of owner or operator.	39-7-105.	Assessor to examine books, records.
39-7-102.	Valuation for assessment.	39-7-106.	False statement - penalty.
39-7-102.5.	Calendar for notice of valuation and appeals.	39-7-107.	Oil and gas lands in more than one county.
39-7-102.7.	Notice of valuation - public record.	39-7-108.	Collection.
39-7-103.	Surface and subsurface equipment valued separately.	39-7-109.	Valuation of severed nonproducing oil or gas mineral interests.
39-7-104.	Failure to file statement.		

39-7-101. Statement of owner or operator. (1) Every operator of, or if there is no operator, every person owning any oil or gas leasehold or lands within this state, either as a single lease or as a unit, which leaseholds or lands are producing or are capable of producing oil or gas on the assessment date of any year, shall, no later than the fifteenth day of April of each year, prepare, sign under the penalty of perjury in the second degree, and file in person or by mail with the assessor of the county wherein such oil and gas leaseholds or lands are located a statement for such lease or unit, on a form prescribed by the administrator, showing:

- (a) The location thereof and the name thereof, if there is a name;
- (b) The name, address, and fractional interest of the operator thereof;
- (c) The number of barrels of oil, or the quantity of gas measured in thousands of cubic feet, sold or transported from the premises during the calendar year immediately preceding, after separately reporting the number of barrels of oil, or the quantity of gas measured in thousands of cubic feet, delivered to the United States government or any agency thereof, the state of Colorado or any agency or political subdivision thereof, or any Indian tribe as royalty during the calendar year immediately preceding;
- (d) The selling price at the wellhead. As used in this article, "selling price at the wellhead" means the net taxable revenues realized by the taxpayer for sale of the oil or gas, whether such sale occurs at the wellhead or after gathering, transportation, manufacturing, and processing of the product. The net taxable revenues shall be equal to the gross lease revenues, minus deductions for gathering, transportation, manufacturing, and processing costs borne by the taxpayer pursuant to guidelines established by the administrator.
- (e) The name, address, and fractional interest of each interest owner taking production in kind and the proportionate share of total unit revenue attributable to each interest owner who is taking production in kind;
- (f) A declaration made under the penalty of perjury in the second degree that includes the following:
 - (I) A statement that the owner or operator has personally examined the statement described in this section and that such statement sets forth, to the best of the owner's or operator's knowledge and belief, the information required by this section; and
 - (II) A statement by the owner or operator as follows:

No representations are made as to the accuracy of the value of any portion of the production from subject property that is taken in kind by any owner other than the undersigned.

(1.5) Any nonoperating interest owner in an oil or gas well may, on or before the fifteenth day of March each year, submit to the operator by certified mail a report of the actual net taxable revenues received at the wellhead and the actual exempt revenues received at the wellhead by such owner for production taken in kind from the property during the calendar year immediately preceding. Operators shall use the information reported pursuant to this subsection (1.5) to determine the selling price at the wellhead. If any nonoperating interest owner fails to provide to the unit operator the information required under this subsection (1.5) by March 15 of each year, such operator shall use the selling price at the wellhead received by such operator for such operator's share of production from such unit in place of such nonreported information, and the amount of tax for which such nonreporting, nonoperating interest owner is liable shall be calculated based on the selling price at the wellhead reported by the operator.

(2) (a) If a statement of an owner or operator is not received or postmarked on or before the fifteenth day of April of each year, the assessor may impose on such owner or operator a late filing penalty in the amount of one hundred dollars for each calendar day the statement is delinquent; except that such late filing penalty shall not exceed three thousand dollars in any calendar year. The assessor may grant an extension of time for filing a statement to any operator or owner. Any extension, and its length, shall be granted solely at the discretion of the assessor.

(b) This subsection (2) is effective January 1, 1997.

(3) (a) The assessor may require the owner or operator to submit written documentation supporting the information provided in the statement. Such documentation shall be

supplied within thirty days after either the date of the postmark on the assessor's written request for such documentation or the date that an owner or operator is required to file a statement pursuant to subsection (1) of this section, whichever is later. Any owner or operator who willfully fails or refuses to comply with the assessor's request for written documentation may be assessed a fine of one hundred dollars for each day of such willful failure or refusal. The total amount of all fines that may be assessed by an assessor against an owner or operator in any calendar year shall not exceed three thousand dollars, regardless of the number of leases or units owned or operated by such owner or operator or the number and length of such willful failures or refusals by such owner or operator.

(b) This subsection (3) is effective January 1, 1997.

(4) All statements and documentation filed with the assessor shall be considered private documents and shall be available on a confidential basis only to the assessor, the administrator, the annual study contractor hired pursuant to section 39-1-104, the executive director of the department of revenue, and their employees. Such statements and documentation shall be available on a confidential basis to the board of assessment appeals and the county board of equalization when information in such statements and documentation is pertinent to an appeal or protest.

(5) (a) Fines imposed pursuant to this section shall be fees of the office of the county assessor. Any unpaid fines imposed pursuant to this section shall be certified to the county treasurer by January 1 of each year and shall be included in the delinquent owner's or operator's property tax statement issued pursuant to section 39-10-103.

(b) This subsection (5) is effective January 1, 1997.

Source: L. 64: R&RE, p. 710, § 1. C.R.S. 1963: § 137-7-1. L. 69: p. 1120, § 1. L. 72: p. 570, § 55. L. 81: (1)(c) and (1)(d) amended, p. 1857, § 1, effective January 1, 1982. L. 93: (1)(d) amended and (1)(e) and (2) added, pp. 241, 242, §§ 1, 2, effective March 31. L. 96: Entire section amended, p. 107, § 1, effective March 25. L. 2007: (4) amended, p. 498, § 1, effective April 16. L. 2009: (3)(a) amended, (HB 09-1161), ch. 44, p. 166, § 1, effective August 5.

Cross references: For perjury in the second degree and the penalty therefor, see §§ 18-8-503 and 18-1.3-501.

ANNOTATION

Selling price for the purposes of this article means the actual amount received by the seller. This amount most closely reflects the market value in the ordinary course of trade and is consistent with the requirement that actual value of real property be determined for tax assessment purposes. *Yuma County Bd. of Equaliz. v. Cabot Petroleum*, 856 P.2d 844 (Colo. 1993).

Where the selling price cannot be determined within a short period of time, it is incumbent upon owners and operators of oil and gas leaseholds and lands to report in mandatory annual statements any dispute concerning the selling price or the fact that the owner or operator have agreed to delayed payments. *Yuma County Bd. of Equaliz. v. Cabot Petroleum*, 856 P.2d 844 (Colo. 1993).

Processing costs occurring on oil leasehold site are properly deducted from the sale price of the oil in valuing the unprocessed material at the wellhead under subsection (1)(d) of this section and art. X, § 3 (1)(b), of the state constitution. The legislature, consistent with the constitution, intended "wellhead" to mean

the physical location where the extracted material emerges from the ground. The statute defines "selling price at the wellhead" as the "next taxable revenues realized by the taxpayer for sale of the oil or gas, whether such sale occurs at the wellhead or after gathering, transportation, manufacturing, and processing of the product". In determining whether on-site processing costs are properly deductible in arriving at the wellhead value of the unprocessed material, the essential practice and lesson of the industry is that there is no market for the material until the initial steps of processing the unprocessed material have occurred. Here, the selling price of the separated oil was established at the storage tanks. Because gathering, processing, and transportation occurred before the product was valued at the tank battery, those costs are properly deductible in arriving at the value of the "unprocessed material" at the wellhead. *Washington County Bd. of Equaliz. v. Petron Dev. Co.*, 109 P.3d 146 (Colo. 2005).

In disallowing taxpayer's deductions, county's determination that "gathering, pro-

cessing, and transportation" expenses could not be deducted unless they occurred "away from" or "beyond" the leasehold property surrounding the well would result in non-uniform treatment of similarly situated taxpayers within the same class and is contrary to both subsection (1)(d) of this section and art. X, § 3 (1)(b), of the state constitution. County was required to allow for deduction of processing costs on the leasehold site to comply with the constitutional and statutory provisions. Washington County Bd. of Equaliz. v. Petron Dev. Co., 109 P.3d 146 (Colo. 2005).

Statutory definition of "selling price at the wellhead" required assessor to allow deductions for gathering, transportation, manufacturing, and processing costs incurred between the wellhead and the point of sale of crude oil. Article X, § 3 (1)(b), of the Colorado Constitution requires valuation of an oil leasehold to be based upon the value of unprocessed oil, and

removal of water from and injection of chemicals into oil between the wellhead and the point of sale constituted processing even though the oil remained crude oil. Petron Dev. Co. v. Washington County Bd. of Equaliz., 91 P.3d 408 (Colo. App. 2003), *aff'd* on other grounds, 109 P.3d 146 (Colo. 2005).

Moreover, a definition of "well site" that includes an entire oil or gas leasehold violates the uniformity of taxation requirement. Leaseholds vary in size and number of wells, and the definition would force oil and gas producers with larger leaseholds who are able to gather, transport, manufacture, and process material entirely on their leaseholds to pay higher taxes by preventing them from deducting the costs of those activities. Petron Dev. Co. v. Washington County Bd. of Equaliz., 91 P.3d 408 (Colo. App. 2003), *aff'd* on other grounds, 109 P.3d 146 (Colo. 2005).

39-7-102. Valuation for assessment. (1) Except as provided in subsection (2) of this section, on the basis of the information contained in such statement, the assessor shall value such oil and gas leaseholds and lands for assessment, as real property, at an amount equal to eighty-seven and one-half percent of:

(a) The selling price of the oil or gas sold therefrom during the preceding calendar year, after excluding the selling price of all oil or gas delivered to the United States government or any agency thereof, the state of Colorado or any agency thereof, or any political subdivision of the state as royalty during the preceding calendar year;

(b) The selling price of oil or gas sold in the same field area for oil or gas transported from the premises which is not sold during the preceding calendar year, after excluding the selling price of all oil or gas delivered to the United States government or any agency thereof, the state of Colorado or any agency thereof, or any political subdivision of the state as royalty during the preceding calendar year.

(2) In order to promote the initiation or continuation of secondary recovery, tertiary recovery, or recycling projects which conserve and avoid waste of oil and gas, the assessor shall value oil and gas leaseholds and lands employing such projects for assessment as provided in subsection (1) of this section but at an amount equal to seventy-five percent of:

(a) The selling price of the oil or gas sold therefrom during the preceding calendar year, after excluding the selling price of all oil or gas delivered to the United States government or any agency thereof, the state of Colorado or any agency thereof, or any political subdivision of the state as royalty during the preceding calendar year;

(b) The selling price of oil or gas sold in the same field area for oil or gas transported from the premises which is not sold during the preceding calendar year, after excluding the selling price of all oil or gas delivered to the United States government or any agency thereof, the state of Colorado or any agency thereof, or any political subdivision of the state as royalty during the preceding calendar year.

Source: L. 64: R&RE, p. 711, § 1. **C.R.S. 1963:** § 137-7-2. **L. 69:** p. 1120, § 2. **L. 77:** Entire section amended, p. 1852, § 2, effective January 1, 1978. **L. 81:** Entire section amended, p. 1857, § 2, effective January 1, 1982.

ANNOTATION

The valuation formula specified by this section is intended to gauge the value of oil in the ground and is not a tax on the amount of oil

actually produced. Petron Dev. Co. v. Washington County Bd. of Equaliz., 91 P.3d 408 (Colo. App. 2003).

39-7-102.5. Calendar for notice of valuation and appeals. Notwithstanding any other provisions to the contrary, lands and leaseholds valued pursuant to this article shall follow the schedule for personal property set forth in this title regarding notices of valuation and appeals of valuation.

Source: L. 88: Entire section added, p. 1301, § 7, effective April 29.

39-7-102.7. Notice of valuation - public record. The assessor shall retain a copy of all notices of valuation for lands and leaseholds valued pursuant to this article, and such copies shall be public records that are available for inspection in accordance with part 2 of article 72 of title 24, C.R.S.

Source: L. 2007: Entire section added, p. 498, § 2, effective April 16.

39-7-103. Surface and subsurface equipment valued separately. All surface oil and gas well equipment and submersible pumps and sucker rods located on oil and gas leaseholds or lands shall be separately valued for assessment as personal property, and such valuation may be at an amount determined by the assessors of the several counties of the state, approved by the administrator, and uniformly applied to all such equipment wherever situated in the state. All other subsurface oil and gas well equipment, including casing and tubing, shall be valued as part of the leasehold or land under section 39-7-102.

Source: L. 64: R&RE, p. 711, § 1. **C.R.S. 1963:** § 137-7-3. **L. 76:** Entire section amended, p. 775, § 1, effective January 1, 1977.

39-7-104. Failure to file statement. If any person owning or operating any oil and gas leaseholds or lands producing or capable of producing oil or gas on the assessment date fails or refuses to prepare and file the statement required by the provisions of section 39-7-101, then the assessor shall list such property and value the same for assessment on the basis of the best information available to and obtainable by him.

Source: L. 64: R&RE, p. 711, § 1. **C.R.S. 1963:** § 137-7-4.

ANNOTATION

This section authorizes retroactive assessments for ad valorem taxes when the taxpayer has caused the incorrect valuation of a gas lease-

hold. Yuma County Bd. of Equalization v. Cabot Petroleum, 856 P.2d 844 (Colo. 1993).

39-7-105. Assessor to examine books, records. The assessor has the authority and right at any time to examine the books, accounts, and records of any person owning or operating such oil and gas leaseholds and lands in order to verify the statement filed by such person, and, if from such examination he finds such statement or any material part thereof to be willfully false and misleading, he shall proceed to value such oil and gas leaseholds or lands for assessment as though no statement had been filed.

Source: L. 64: R&RE, p. 711, § 1. **C.R.S. 1963:** § 137-7-5.

ANNOTATION

This section authorizes retroactive assessments for ad valorem taxes when the taxpayer has caused the incorrect valuation of a gas lease-

hold. Yuma County Bd. of Equalization v. Cabot Petroleum, 856 P.2d 844 (Colo. 1993).

39-7-106. False statement - penalty. If any person required to file such statement willfully and knowingly subscribes to any false statement contained therein, he is guilty of perjury in the second degree and upon conviction shall be punished according to law.

Source: L. 64: R&RE, p. 711, § 1. C.R.S. 1963: § 137-7-6. L. 72: p. 570, § 56.

Cross references: For perjury in the second degree and the penalty therefor, see §§ 18-8-503 and 18-1.3-501.

39-7-107. Oil and gas lands in more than one county. (1) Whenever any oil and gas leaseholds or lands are situated partly in one county and partly in another county or in lesser political subdivisions, the person making the statement required by the provisions of section 39-7-101 shall allocate the production value between such counties or lesser political subdivisions in the proportion that the surface acreage of such oil and gas leaseholds or lands situated within each such county or lesser political subdivision bears to the total surface acreage thereof.

(2) Whenever a group of contiguous oil and gas leaseholds or lands operated as a unit is situated partly in one county and partly in another county or lesser political subdivisions, the person making the statement required by the provisions of section 39-7-101 shall assign to each county or lesser political subdivision that portion of the production value from the unit as is assigned by the unit agreement to the oil and gas leaseholds or lands actually situated in each such county or lesser political subdivision.

(3) Whenever any oil and gas leaseholds or lands are situated partly in one county and partly in another county, a copy of the statement required by the provisions of section 39-7-101 shall be filed with the assessor of each such county.

Source: L. 64: R&RE, p. 711, § 1. C.R.S. 1963: § 137-7-7.

39-7-108. Collection. Beginning January 1, 1980, when taxes on oil and gas leaseholds and lands are due, such taxes shall be a debt due from the owner or the unit operator as the case may be and shall be recoverable by the treasurer by direct action in debt; except that such taxes treated as debt due from a fractional interest owner shall not exceed the amount of taxes for which the fractional owner is liable, as provided in section 39-10-106. The treasurer may also collect such debt as if the property were personal property.

Source: L. 79: Entire section added, p. 1418, § 2, effective April 25.

39-7-109. Valuation of severed nonproducing oil or gas mineral interests. (1) The actual value of severed nonproducing oil or gas or oil and gas mineral interests shall be determined by the income approach capitalizing the annual net rental income for such nonproducing mineral interests at an appropriate market rate. If such severed mineral interests are unleased, the assessor shall use the average per acre annual rental of all such mineral interests under lease in the county or in the area to determine the actual value thereof.

(2) For the purposes of this section, "annual rental" means annual rental payments, or other compensatory payments payable for the right to hold a mineral interest, which payments are fixed and certain in amount and payable periodically over a fixed period calculated on a twelve-month basis. "Annual rental" shall be the representative annual rental for such mineral interests leased within the county or the area, and "annual rental" does not include royalty payments, advanced royalty payments, bonus payments, or minimum royalty payments covering periods when the mineral interests are not in production, even though said payments may be fixed and certain in amount and payable periodically. For the purposes of this subsection (2), "royalty payments", "advanced royalty payments", and "minimum royalty payments" are payments attributable to a portion of the current or future mineral production of a mineral interest, paid for the privilege of producing minerals, and "bonus payments" means compensation paid as

consideration for the granting of a mineral lease or other compensatory payments which are payable regardless of the extent of use of the mineral interest and which are fixed and certain in amount and may be payable in one or more periodical increments over a fixed period.

Source: L. 85: Entire section added, p. 1213, § 10, effective May 9.

Equalization

ARTICLE 8

County Boards of Equalization

Editor’s note: This article was repealed and reenacted in 1964. For historical information concerning the repeal and reenactment, see the editor’s note before the article 1 heading.

39-8-101.	County board of equalization - quorum.		nity to submit case to arbitration.
39-8-102.	Duties of county board of equalization.	39-8-108.5.	Arbitration of property valuations - arbitrators - qualifications - procedures.
39-8-103.	Notice of change in valuation.	39-8-108.7.	Review of decision - effect of stipulation by taxpayer - repeal. (Repealed)
39-8-104.	Notice of meeting.		Effects of board of assessment appeals or district court decision.
39-8-105.	Reports of assessor.		
39-8-106.	Petitions for appeal.	39-8-109.	
39-8-107.	Hearings on appeal.		
39-8-108.	Decision - review - opportunity		

39-8-101. County board of equalization - quorum. The board of county commissioners of each county of the state, except the city and county of Denver and the city and county of Broomfield, shall comprise the board of equalization of such county. In the city and county of Denver, the board of equalization shall be comprised of such of its officers as may be provided by its charter. In the city and county of Broomfield, the board of equalization shall be the city council or a board or commission appointed by the city council. A majority of the board shall constitute a quorum, and no official action shall be taken at any meeting of the board unless a quorum is present.

Source: L. 64: R&RE, p. 712, § 1. C.R.S. 1963: § 137-8-1. L. 2001: Entire section amended, p. 269, § 16, effective November 15.

Cross references: For constitutional grant of powers to county boards of equalization, see § 15 of article X of the state constitution.

ANNOTATION

Law reviews. For article, “Appealing Property Tax Assessments”, see 15 Colo. Law. 798 (1986).

Applied in *West-Brandt Found., Inc. v. Carper*, 199 Colo. 334, 608 P.2d 339 (1980).

39-8-102. Duties of county board of equalization. (1) The county board of equalization shall review the valuations for assessment of all taxable property appearing in the assessment roll of the county, directing the assessor to supply any omissions which may come to its attention. It shall correct any errors made by the assessor, and, whenever in its judgment justice and right so require, it shall raise, lower, or adjust any valuation for assessment appearing in the assessment roll to the end that all valuations for assessment of property are just and equalized within the county.

(2) (a) to (h) Repealed.

(i) The county board of equalization shall have the authority to appoint independent referees who are experienced in property valuation to conduct hearings pursuant to subsection (1) of this section on behalf of the county board of equalization and to make findings and submit recommendations to the county board of equalization for its final action. However, no person shall be appointed as an independent referee pursuant to the provisions of this paragraph (i) in any county during any property tax year in which such person represents or has represented any taxpayer in such county in any matter relating to the protest and appeal of property valuation or to the abatement or refund of property taxes. In addition, no person appointed as an independent referee pursuant to the provisions of this paragraph (i) shall represent any taxpayer who appeared in any hearing before such independent referee in any matter subsequent to such hearing relating to the protest and appeal of property valuation or to the abatement or refund of property taxes.

(j) and (k) Repealed.

(3) (Repeal provision deleted by revision.)

(4) Repealed.

Source: L. 64: R&RE, p. 714, § 1. C.R.S. 1963: § 137-8-8. L. 77: Entire section amended, p. 1758, § 1, effective June 1; (4) added, p. 1736, § 18, effective June 20. L. 79: (2)(i) amended, p. 1641, § 53, effective July 19. L. 81: (4) repealed, p. 1835, § 14, effective June 12. L. 92: (2)(i) amended, p. 2209, § 6, effective June 3.

Editor's note: Subsection (3) provided for the repeal of subsections (2)(a) to (2)(h), (2)(j), and (2)(k), effective January 1, 1978, and is therefore deleted by revision as obsolete. (See L. 77, p. 1758.)

ANNOTATION

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Equalization system is not in conflict with due process of law. People ex rel. State Bd. of Equalization v. Hively, 139 Colo. 49, 336 P.2d 721 (1959).

Boards to adjust property values. The constitutional duty imposed upon the state board of equalization is to adjust and equalize the property values among the several counties of the state. Since these duties having been imposed upon these agencies by § 15 of art. X, Colo. Const., the general assembly is powerless to take them away or confer them upon another. People ex rel. State Bd. of Equalization v. Pitcher, 56 Colo. 343, 138 P. 509 (1914), aff'd, 239 U.S. 441, 36 S. Ct. 141, 60 L. Ed. 372 (1915).

Equalization and assessment distinguished.

The process of equalization relates to the raising or lowering of the total valuation placed upon a class or subclass of property in the aggregate. Assessment, on the other hand, constitutes the process of placing a value for tax purposes upon the property of a particular taxpayer. Wenner v. Bd. of Assessment Appeals, 866 P.2d 172 (Colo. App. 1993).

The broad powers granted by subsection (1) include those incidental powers necessary to effectuate an equalization of any disparities which affect the uniformities of the tax assessed. Where board directed the assessor to revalue properties to correct a disparity, board did not exceed its statutory authority. Wenner v. Bd. of Assessment Appeals, 866 P.2d 172 (Colo. App. 1993).

Applied in Am. Mobilehome Ass'n v. Dolan, 191 Colo. 433, 553 P.2d 758 (1976).

39-8-103. Notice of change in valuation. The county clerk and recorder shall notify each person affected of any change in the valuation of his property ordered by the board and shall furnish the assessor with a copy of such notice.

Source: L. 64: R&RE, p. 714, § 1. C.R.S. 1963: § 137-8-9. L. 90: Entire section amended, p. 1697, § 21, effective June 9.

39-8-104. Notice of meeting. (1) Except as provided in subsection (2) of this section, prior to July 1 of each year, the county clerk and recorder shall give notice in at least one issue of a newspaper published in his or her county that beginning on July 1, the county board of equalization will sit in the county's regular public meeting location or other appropriate public meeting place to review the assessment roll of all taxable property

located in the county, as prepared by the assessor, and to hear appeals from determinations of the assessor.

(2) (a) Prior to a date established by the county board of equalization, but no later than September 1, the county clerk and recorder in a county that has made an election pursuant to section 39-5-122.7 (1) shall give notice in at least one issue of a newspaper published in his or her county that beginning such date the county board of equalization will sit in the county's regular public meeting location or other appropriate public meeting place to review the assessment roll of all taxable property located in the county, as prepared by the assessor, and to hear appeals from determinations of the assessor.

(b) Prior to September 1, 2002, and prior to each September 1 thereafter, the county clerk and recorder shall give notice in at least one issue of a newspaper published in his or her county of any date or dates between September 1 and October 1 on which the county commissioners, sitting as the county board of equalization, shall hear contests of property tax exemption denials as required by section 39-3-206 (2).

(3) If there is no newspaper, then such notice shall be conspicuously posted in the offices of the county clerk and recorder, the treasurer, and the assessor and in at least two other public places in the county seat.

Source: L. 64: R&RE, p. 712, § 1. C.R.S. 1963: § 137-8-2. L. 81: Entire section amended, p. 1834, § 10, effective June 12. L. 89: Entire section amended, p. 1458, § 14, effective June 7. L. 98: Entire section amended, p. 469, § 3, effective July 1. L. 2001: (2) amended, p. 469, § 2, effective April 25. L. 2009: (1) and (2)(a) amended, (SB 09-292), ch. 369, p. 1986, § 134, effective August 5.

ANNOTATION

Annotator's note. The following annotations include cases decided under this section as it existed prior to its 1964 repeal and reenactment.

Publication of meeting dates for taxpayer's benefit. The directions given the county board of equalization as to the required dates of meetings are for the benefit of the taxpayer, to give him notice, and opportunity to be heard, as it is mandatory upon a taxpayer to make his complaint before the board at the time provided by this section. *Tarabino Real Estate Co. v. Sandoval*, 115 Colo. 336, 173 P.2d 459 (1946).

When provisions of section to be construed as mandatory. The requirements of this section are to be construed as mandatory only in specific instances where it is clearly shown on behalf of

an aggrieved taxpayer, that, on account of non-compliance with these statutory requirements by the county officials charged therewith, the taxpayer has been deprived of an opportunity for a hearing or of some other right important to him. *Northcutt v. Burton*, 127 Colo. 145, 254 P.2d 1013 (1953); *Citizens' Comm. for Fair Prop. Taxation v. Warner*, 127 Colo. 121, 254 P.2d 1005 (1953).

Absent grievance, taxpayer cannot complain of lack of notice. An owner, who has no grievance, cannot complain that a proper notice of the meeting of the board for the purpose of equalizing was not given. *Citizens' Comm. for Fair Prop. Taxation v. Warner*, 127 Colo. 121, 254 P.2d 1005 (1953).

39-8-105. Reports of assessor. (1) At a meeting of the county board of equalization on the second Monday in July, or on the second Monday in September in a county that has made an election pursuant to section 39-5-122.7 (1), the assessor shall report the valuation for assessment of all taxable real property in the county. The assessor shall submit a list of all persons who have appeared before him or her to present objections or protests concerning real property and his or her action in each case.

(2) At a meeting of the board on or before July 15, the assessor shall report the valuation of all taxable personal property in the county and shall note any valuations for assessment of portable or movable equipment which have been apportioned pursuant to the provisions of section 39-5-113. He shall submit a list of all persons in the county who have failed to return any schedules and shall report his action in each case. He shall also submit a list of persons who have appeared before him to present objections or protests and his action in each case.

Source: L. 64: R&RE, p. 712, § 1. C.R.S. 1963: § 137-8-3. L. 67: p. 951, § 21.

L. 76: Entire section amended, p. 763, § 25, effective January 1, 1977. **L. 81:** Entire section R&RE, p. 1834, § 11, effective June 12. **L. 88:** (2) amended, p. 1301, § 8, effective April 29. **L. 90:** (1) amended, p. 1694, § 11, effective January 1, 1991. **L. 98:** (1) amended, p. 469, § 4, effective July 1. **L. 2009:** (2) amended, (SB 09-292), ch. 369, p. 1987, § 135, effective August 5.

ANNOTATION

Annotator's note. The following annotations include cases decided under this section as it existed prior to its 1964 repeal and reenactment.

County assessor is under duty to assess all taxable property for taxation, regardless of whether a reappraisal thereof has been completed; although he is not required to await completion of reappraisal before making up his tax roll, he is under obligation nevertheless, in the interest of uniformity, to determine his valuations in conformity with reappraisal standards insofar as this might reasonably be accom-

plished under the circumstances. *Citizens' Comm. for Fair Prop. Taxation v. Warner*, 127 Colo. 121, 254 P.2d 1005 (1953).

After report is made, assessor's quasi-judicial functions end. When the county assessor has completed his assessment and submits his assessment roll to the county board of equalization, his quasi-judicial functions and his duties, thereafter to be performed, are purely ministerial. *People ex rel. State Bd. of Equaliz. v. Pitcher*, 61 Colo. 149, 156 P. 812 (1916).

39-8-106. Petitions for appeal. (1) The county board of equalization shall receive and hear petitions from any person whose objections or protests have been refused or denied by the assessor. A petition shall be in a form approved by the property tax administrator pursuant to section 39-2-109 (1) (d), the contents of which shall include the following:

(a) A statement informing the person of his or her right to appeal, the time and place at which the county board of equalization will hear appeals from determinations of the assessor, and that, by mailing or delivering one copy of the form to the county board of equalization that is received or postmarked on or before July 15 of that year for real property and July 20 of that year for personal property or, if a county has made an election pursuant to section 39-5-122.7 (1), on or before September 15 of that year for both real and personal property, the person will be deemed to have filed his or her petition for hearing with the county board of equalization. The date the form is received by the county board of equalization shall be stamped on the form. All forms shall be presumed to be on time unless the county board of equalization can present evidence to show otherwise.

(b) A requirement that the assessor's office set forth the following information on the face of the form:

(I) A description of the property claimed to be excessively, erroneously, or illegally valued;

(II) The actual value placed upon it by the assessor;

(III) A specific and detailed statement of the grounds delineated in this subparagraph (III), upon which the assessor relied to justify such valuation. The grounds are appropriate consideration of the approaches to appraisal set forth in section 39-1-103 (5) (a) and classification of the property. For agricultural lands, the grounds are: Earning or productive capacity; classification; and capitalization rate.

(IV) The assessor's written statement refusing to change such valuation; and

(V) The actual value placed upon it by the person whose objection and protest has been denied.

(c) Space for the person whose objection and protest has been denied to state the grounds on which he relied and to indicate the manner, if any, in which he disagrees with the assessor's statement of the information described in paragraph (b) of this subsection (1).

(1.5) In addition to any other requirements set forth in subsection (1) of this section, any petition for appeal relating to real property shall contain the actual value of such real property, stated in terms of a specific dollar amount, which is being offered as the correct valuation. Nothing in this subsection (1.5) shall be construed to exempt paid representatives of taxpayers from the requirements of part 7 of article 61 of title 12, C.R.S., if applicable.

(1.7) Any person who objects to the application of the term "integral to an agricultural operation" to their property in accordance with section 39-1-102 (1.6) (a) (I) and (14.4) and

whose objections or protests have been denied by the assessor may submit a petition for appeal to the county board of equalization to the same extent as any other protest or objection for which an appeal to the board is provided under law and shall satisfy all requirements for the prosecution of such appeal as provided by law.

(2) Upon receiving a petition in the form described in subsection (1) of this section, the county board of equalization or its authorized agent shall note the filing of the petition, set a time for hearing of said petition, and notify the petitioner by mail of such time for hearing.

(3) If the assessor fails or refuses to comply with the provisions of section 39-5-122, this section, or both, relating to said form, the objecting person shall not be deprived of his right of appeal to the county board of equalization. The objecting person may present his objections and protests in person or by counsel, orally or by letter or other informal writing, on any day during the meeting of the county board of equalization held for the purpose of hearing appeals. The said failure or refusal of the assessor shall not, in any manner, deprive the objecting person of his right to a full, fair, and complete hearing of his objections and protests by the county board of equalization.

Source: L. 64: R&RE, p. 713, § 1. C.R.S. 1963: § 137-8-4. L. 73: p. 1441, § 2. L. 75: (1)(b)(III) amended, p. 1455, § 2, effective July 30. L. 76: (1)(a) and (1)(b)(III) amended, p. 763, §§ 26, 27, effective January 1, 1977. L. 81: (1)(a) amended, p. 1834, § 12, effective June 12. L. 83: (1)(b)(III) amended, p. 2087, § 4, effective October 13. L. 88: (1)(a) amended, p. 1301, § 9, effective April 29. L. 89: (1)(a) amended, p. 1458, § 15, effective June 7. L. 90: (1)(a), (1)(b)(II), and (1)(b)(V) amended, p. 1694, § 12, effective January 1, 1991. L. 92: (1)(a) amended and (1.5) added, p. 2210, § 7, effective June 3. L. 98: IP(1) and (1)(a) amended, p. 469, § 5, effective July 1. L. 2005: IP(1) and (1)(a) amended, p. 391, § 3, effective April 27. L. 2011: (1.7) added, (HB 11-1146), ch. 166, p. 573, § 3, effective January 1, 2012.

ANNOTATION

Law reviews. For article, "Appealing Property Tax Assessments", see 15 Colo. Law. 798 (1986).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Evaluation of property presumed correct. The evaluation of property for taxation, as determined by the assessor, is presumed to be right. *Stalder v. Bd. of County Comm'rs*, 147 Colo. 493, 364 P.2d 389 (1961).

Standard of proof required of taxpayer. Clear and convincing evidence is the degree of proof required of a taxpayer to overcome the presumption that an assessment is correct. *Majestic Great W. Sav. & Loan Ass'n v. Reale*, 30 Colo. App. 564, 499 P.2d 644 (1972).

It is not necessary to show an assessment is manifestly excessive, fraudulent, or oppressive. *Majestic Great W. Sav. & Loan Ass'n v. Reale*, 30 Colo. App. 564, 499 P.2d 644 (1972).

Prerequisites to appeal. The appearance before the assessor under § 39-5-122 with "objection and protest", which are then "refused or denied", is a prerequisite to an appeal to the county board of equalization. *Modular Cmty., Inc. v. McKnight*, 36 Colo. App. 38, 536 P.2d 1168 (1975), *aff'd*, 191 Colo. 101, 550 P.2d 866 (1976).

"Petitioner" refers to taxpayer. In this section and § 39-8-108, the term "petitioner" re-

fers to taxpayer. *Adams County Bd. of County Comm'rs v. Union P. R. R.*, 34 Colo. App. 156, 525 P.2d 1202 (1974).

This section and § 39-5-122 afford remedy at law. Section 39-5-122 and this section afford a plain, speedy, and efficient remedy at law. *Kortz v. Ellingson*, 181 F. Supp. 857 (D. Colo. 1960).

Effect of taxpayer's failure to follow statutory remedy. If an assessment is erroneous, or excessive, the right to relief can be lost through failure to pursue the proper statutory remedy. *Citizens' Comm. for Fair Prop. Taxation v. Warner*, 127 Colo. 121, 254 P.2d 1005 (1953).

A party who fails to invoke the remedy under this section cannot be heard to complain of errors in the valuation of his property after a sale has been made and the tax deed issued. *Barnett v. Jaynes*, 26 Colo. 279, 57 P. 703 (1899).

The law has provided a forum — namely, the board of equalization — whose duty it is, at the instance of anyone aggrieved, to correct errors in the assessment roll returned by the assessor. Having failed to avail himself of the plain, speedy, and adequate remedy thus afforded, to correct his assessment upon these grounds, or, at least, present these questions to the board, he cannot resort to proceedings in certiorari for that purpose. *People ex rel. Hallett v. Bd. of Comm'rs*, 27 Colo. 86, 59 P. 733 (1899).

Taxpayer may seek review at each stage of decision-making process. It is evident from the provisions of this section and § 39-8-108 that the general assembly contemplated that at each stage of the decision-making process, the taxpayer could seek review of an adverse decision: *Adams County Bd. of County Comm'rs v. Union P. R. R.*, 34 Colo. App. 156, 525 P.2d 1202 (1974).

A party may seek review of only the total valuation for assessment and not of the component parts of that total. The statutes speak only of the right to appeal the value or the valuation assessment set by the assessor. Notably absent from the statutes is language that would permit a party to limit the scope of the protest by appealing only a portion or component of the assessed value. *Cherne v. Bd. of Equaliz.*, 885 P.2d 258 (Colo. App. 1994).

Right to protest property valuations is not limited to person who is owner of property on record as of the first day of the tax year, and any person who is an owner of the property for

any portion of the assessment period has standing to protest such valuations. *Tenney v. Bd. of Assessment Appeals*, 856 P.2d 89 (Colo. App. 1993).

Protest after meeting of board is too late. A protest against an alleged erroneous assessment is too late when made after the board of equalization has held its meetings. *Miller v. Bd. of County Comm'rs*, 92 Colo. 425, 21 P.2d 714, appeal dismissed, 290 U.S. 586, 54 S. Ct. 78, 78 L. Ed. 518 (1933).

Jurisdiction of board of county commissioners is plenary on review. In *re Hover Motors*, 120 Colo. 511, 212 P.2d 99 (1949).

Judicial review of decision by state board of assessment appeals limited. Neither the county board of commissioners nor the county assessor may seek judicial review of a decision by the state board of assessment appeals. *Adams County Bd. of County Comm'rs v. Union P. R. R.*, 34 Colo. App. 156, 525 P.2d 1202 (1974).

Applied in *Mardi, Inc. v. City & County of Denver*, 151 Colo. 28, 375 P.2d 682 (1962).

39-8-107. Hearings on appeal. (1) At the hearing upon a petition, the assessor or the assessor's authorized representative shall be present and shall produce information to support the basis and amount of the assessor's valuation of the property. The board shall hear and consider all testimony and examine all exhibits produced or introduced by either the petitioner or the assessor, with no presumption in favor of any pending valuation, and may subpoena witnesses to testify. The costs of producing the petitioner's witnesses shall be paid by the petitioner, and the costs of producing the assessor's witnesses shall be paid by the county. On the basis of the testimony produced and the exhibits introduced, the board shall grant or deny the petition, in whole or in part, and shall notify the petitioner and the assessor in writing. If the board denies the petition, in whole or in part, such written notice shall inform the petitioner of the right to appeal within the thirty-day period following the denial to the district court or the board of assessment appeals pursuant to the provisions of section 39-8-108 (1) or within the thirty-day period following the denial to submit the case to arbitration pursuant to the provisions of section 39-8-108.5. Such notice shall state that, if the appeal is to the board of assessment appeals, the hearing before the board of assessment appeals shall be the last hearing at which testimony, exhibits, or any other type of evidence may be introduced by either party and that, if there is an appeal to the court of appeals pursuant to section 39-8-108 (2), the record from the hearing before the board of assessment appeals and no new evidence shall be the basis for the court's decision. The phone number and address of the board of assessment appeals shall also be included on the notice. The notice shall also state, in general terms, how to pursue arbitration and that, if a taxpayer submits the case to arbitration, the decision reached under such process shall be final and not subject to review. If a referee heard the case, the board shall, at the written request of any taxpayer or any agent of such taxpayer within seven working days after receipt of said request, make available to the taxpayer or agent the referee's findings and recommendations. At the board's election, the board may either mail, fax, or send by electronic transmission such findings and recommendations to the address, phone number, or electronic address supplied by said taxpayer or agent. Upon receipt of such request, the board shall notify the taxpayer or agent of the estimated cost of providing such findings and recommendations, payment of which shall be made prior to providing such findings and recommendations. Upon providing such findings and recommendations, the board may include a bill for the reasonable cost above the estimated cost and up to the statutory maximum which shall be due and payable upon receipt by the taxpayer or agent.

(2) The county board of equalization shall continue its hearings from time to time until all petitions have been heard, but all such hearings shall be concluded and decisions

rendered thereon by the close of business on August 5 of that year; except that, in a county that has made an election pursuant to section 39-5-122.7 (1), all such hearings shall be concluded and decisions rendered thereon by the close of business on November 1 of that year. Any decision shall be mailed to the petitioner within five business days of the date on which such decision is rendered.

(3) At the written request of any taxpayer or any agent of such taxpayer and subject to such confidentiality requirements as provided by law, the assessor shall, within three working days after receipt of said request, make available to the taxpayer or agent the data used by the assessor in determining the actual value of any property owned by such taxpayer. At the assessor's election, the assessor may either mail, fax, or send by electronic transmission to the address, phone number, or electronic address supplied by said taxpayer or agent such data. Such data shall include but shall not be limited to the data derived from the declarations filed pursuant to the provisions of article 14 of this title and confidential data, provided that such confidential data shall be presented in such a manner that the source cannot be identified. Upon receipt of such request, the assessor shall notify the taxpayer or agent of the estimated cost of providing such information, payment of which shall be made prior to providing such information. Upon providing such information, the assessor may include a bill for the reasonable cost above the estimated cost and up to the statutory maximum which shall be due and payable upon receipt by the taxpayer or agent.

(4) The assessor may not rely on any confidential information which is not available for review by the taxpayer, unless such confidential data is presented in such a manner that the source cannot be identified.

(5) (a) (I) On and after August 10, 2011, in addition to any other requirements under law, any petitioner appealing either a valuation of rent-producing commercial real property to the board of assessment appeals pursuant to section 39-8-108 (1) or a denial of an abatement of taxes pursuant to section 39-10-114 shall provide to the county board of equalization or to the board of county commissioners of the county in the case of an abatement, and not to the board of assessment appeals, the following information, if applicable:

(A) Actual annual rental income for two full years including the base year for the relevant property tax year;

(B) Tenant reimbursements for two full years including the base year for the relevant property tax year;

(C) Itemized expenses for two full years including the base year for the relevant property tax year; and

(D) Rent roll data, including the name of any tenants, the address, unit, or suite number of the subject property, lease start and end dates, option terms, base rent, square footage leased, and vacant space for two full years including the base year for the relevant property tax year.

(II) The petitioner shall provide the information required by subparagraph (I) of this paragraph (a) within ninety days after the appeal has been filed with the board of assessment appeals.

(b) (I) The assessor, the county board of equalization, or the board of county commissioners of the county, as applicable, shall, upon request made by the petitioner, provide to a petitioner who has filed an appeal with the board of assessment appeals not more than ninety days after receipt of the petitioner's request, the following information:

(A) All of the underlying data used by the county in calculating the value of the subject property that is being appealed, including the capitalization rate for such property; and

(B) The names of any commercially available and copyrighted publications used in calculating the value of the subject property.

(II) The party providing the information to the petitioner pursuant to subparagraph (I) of this paragraph (b) shall redact all confidential information contained therein.

(c) If a petitioner fails to provide the information required by subparagraph (I) of paragraph (a) of this subsection (5) by the deadline specified in subparagraph (II) of said paragraph (a), the county may move the board of assessment appeals to compel disclosure and to issue appropriate sanctions for noncompliance with such order. The motion may be made directly by the county attorney and shall be accompanied by a certification that the

county assessor or the county board of equalization has in good faith conferred or attempted to confer with such petitioner in an effort to obtain the information without action by the board of assessment appeals. If an order compelling disclosure is issued under this paragraph (c) and the petitioner fails to comply with such order, the board of assessment appeals may make such orders in regard to the noncompliance as are just and reasonable under the circumstances, including an order dismissing the action or the entry of a judgment by default against the petitioner. Interest due the taxpayer shall cease to accrue as of the date the order compelling disclosure is issued, and the accrual of interest shall resume as of the date the contested information has been provided by the taxpayer.

(d) In the notice of determination, the county board of equalization shall inform a taxpayer of the taxpayer's obligation to provide the information required by paragraph (a) of this subsection (5).

(e) The county board of equalization and the board of county commissioners receiving any information provided by a petitioner pursuant to subparagraph (I) of paragraph (a) of this subsection (5) that is exempt from disclosure under either section 24-72-204 (3) (a) (IV), C.R.S., or another provision of the "Colorado Open Records Act", part 2 of article 72 of title 24, C.R.S., shall keep such information confidential; except that such information may be disclosed to the administrator and the employees of his or her office, the board of assessment appeals, the county board of equalization, the board of county commissioners of the county in which the subject property is located, the office of the county assessor, or a person retained to appraise or provide value consultation in connection with the subject property where such information is pertinent to an appeal.

(f) Nothing in this subsection (5) shall be construed to apply to a public utility whose valuation for property tax purposes is determined by the administrator in accordance with the provisions of article 4 of this title.

Source: L. 64: R&RE, p. 713, § 1. C.R.S. 1963: § 137-8-5. L. 67: p. 951, § 22. L. 88: (1) amended, p. 1302, § 10, effective April 29. L. 89: (2) amended, p. 1458, § 16, effective June 7. L. 90: (1) amended and (3) and (4) added, pp. 1701, 1700, §§ 32, 30, effective June 9. L. 93: (2) amended, p. 1689, § 7, effective June 6. L. 96: (1) amended, p. 722, § 6, effective May 22. L. 98: (2) amended, p. 470, § 6, effective July 1. L. 2000: (1) and (3) amended, p. 1501, § 6, effective August 2. L. 2011: (5) added, (SB 11-119), ch. 130, p. 453, § 1, effective August 10.

ANNOTATION

Law reviews. For article, "Appealing Property Tax Assessments", see 15 Colo. Law. 798 (1986).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Board's hearings are quasi-judicial. The board of equalization hearings, as distinguished from an assessor's search for pertinent information, though generally informally conducted, are quasi-judicial. *May Stores Shopping Centers, Inc. v. Shoemaker*, 151 Colo. 100, 376 P.2d 679 (1962).

Its decisions must be based on proper evidence. Hearings before the board of equalization and decisions must be based on evidence properly before it. *May Stores Shopping Centers, Inc. v. Shoemaker*, 151 Colo. 100, 376 P.2d 679 (1962).

Proceedings before the board of assessment appeals are de novo in nature and an appeal of a classification decision of the board is thus limited to review of the propriety of the board's

classification decision without regard to the prior decision of the county assessor. *Johnston v. Park County Bd. of Equaliz.*, 979 P.2d 578 (Colo. App. 1999).

Records must be kept of proceedings by the board of equalization and decisions must be based upon the evidence properly before the board. *May Stores Shopping Centers, Inc. v. Shoemaker*, 151 Colo. 100, 376 P.2d 679 (1962).

Section does not require board to issue formal findings of fact or conclusions of law. *Carrara Place v. Bd. of Equaliz.*, 761 P.2d 197 (Colo. 1988).

Secret or informal hearings or meetings with assessor cannot be basis of a board of equalization's actions. *May Stores Shopping Centers, Inc. v. Shoemaker*, 151 Colo. 100, 376 P.2d 679 (1962).

Subsection (2) requires that the board's decision be mailed only to the taxpayer. While it may be the common and better practice to notify an agent appearing for the taxpayer, the board nevertheless complied with this require-

ment upon mailing its decision directly to the taxpayer at the taxpayer's address of record. *Tri-Havana LLC v. Arapahoe County Bd. of Equaliz.*, 961 P.2d 604 (Colo. App. 1998).

Timely commencement of action. Assessor and his successors in office were necessary and proper parties to proceedings before the board of equalization and thus were proper parties to the trial de novo in district court, and plaintiffs, by joining the same party-opponents who had been involved in the proceedings before the board, commenced their action in a timely manner. *B.C., Limited, et al. v. Krinhop*, 815 P.2d 1016 (Colo. App. 1991).

Board's failure to act within time limits prescribed in subsection (2) did not invalidate the board's actions where taxpayers' rights were not abridged. *Wenner v. Bd. of Assessment Appeals*, 866 P.2d 172 (Colo. App. 1993).

A board of equalization (BOE) board member may not be called in a proceeding before the board of assessment appeals (BAA) to explain a BOE decision, or how it was reached, in the absence of a clear showing of illegal or unlawful action, misconduct, bias, or bad faith on the part of the decision makers. *Gilpin County BOE v. Russell*, 941 P.2d 257 (Colo. 1997).

A BOE board member's testimony at a BAA proceeding is barred by the mental process rule. *Gilpin County BOE v. Russell*, 941 P.2d 257 (Colo. 1997).

Applied in *Majestic Great W. Sav. & Loan Ass'n v. Reale*, 30 Colo. App. 564, 499 P.2d 644 (1972).

39-8-108. Decision - review - opportunity to submit case to arbitration. (1) If the county board of equalization grants a petition, in whole or in part, the assessor shall adjust the valuation accordingly; but, if the petition is denied, in whole or in part, the petitioner may appeal the valuation set by the assessor or, if the valuation is adjusted as a result of a decision of the county board of equalization, the adjusted valuation to the board of assessment appeals or to the district court of the county wherein the petitioner's property is located for a trial de novo, or the petitioner may submit the case to arbitration pursuant to the provisions of section 39-8-108.5. Such appeal or submission to arbitration shall be taken no later than thirty days after the date such denial was mailed pursuant to section 39-8-107 (2). Any decision rendered by the county board of equalization shall state that the petitioner has the right to appeal the decision of the county board to the board of assessment appeals or to the district court of the county wherein the petitioner's property is located or to submit the case to arbitration and, to preserve such right, the time by which such appeal or submission to arbitration must be made. Any request by a taxpayer for a hearing before the board of assessment appeals shall be accompanied by a nonrefundable filing fee in an amount specified in section 39-2-125 (1) (h). In addition, any request by a taxpayer for a hearing before the board of assessment appeals shall be stamped with the date on which such request was received by the board. All such requests shall be presumed to be on time unless the board can present evidence to show otherwise.

(2) If the petitioner has appealed to the board of assessment appeals and the decision of the board of assessment appeals is against the petitioner, the petitioner may petition the court of appeals for judicial review according to the Colorado appellate rules and the provisions of section 24-4-106 (11), C.R.S. If the decision of the board is against the respondent, the respondent, upon the recommendation of the board that it either is a matter of statewide concern or has resulted in a significant decrease in the total valuation of the respondent county, may petition the court of appeals for judicial review according to the Colorado appellate rules and the provisions of section 24-4-106 (11), C.R.S. In addition, on and after June 7, 1989, if the decision of the board is against the respondent, the respondent may petition the court of appeals for judicial review of alleged procedural errors or errors of law within thirty days of such decision when the respondent alleges procedural errors or errors of law by the board of assessment appeals. If the board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation of the respondent county, the respondent may petition the court of appeals for judicial review of such questions within thirty days of such decision. Any decision issued by the board of assessment appeals shall inform the petitioner or respondent, as may be appropriate, of the right to petition the court of appeals for judicial review.

(3) If the decision of the county board of equalization has been appealed to the district court, the decision of the court shall be subject to appellate review according to the Colorado appellate rules and the provisions of section 24-4-106 (9), C.R.S.

(4) If the taxpayer submits his case to arbitration pursuant to the provisions of section 39-8-108.5, the decision reached under such process shall be final and not subject to review.

(5) In any appeal authorized by this section or by section 39-5-122, 39-5-122.7, or 39-10-114:

(a) The valuation shall not be adjusted to a value higher than the valuation set by the county board of equalization pursuant to section 39-8-107, except as specifically permitted pursuant to section 39-5-125;

(b) The assessor's valuation of similar property similarly situated shall be credible evidence;

(c) The respondent may not rely on any confidential information which is not available for review by the taxpayer unless such confidential data is presented in such a manner that the source cannot be identified;

(d) Upon request, the respondent shall make available to the taxpayer two working days prior to any appeal hearing data supporting the assessor's valuation. Such request shall be accompanied by data supporting the taxpayer's valuation. Nothing in this paragraph (d) shall be construed to prohibit the introduction at such appeal hearing of any data discovered as a result of the exchange of data required by this paragraph (d).

(e) In using the market approach to determine the value of residential real property, if the assessor has knowledge of the conversion from one residential use to a different residential use, such conversion shall create a rebuttable presumption that the sale of such property is not a comparable sale for purposes of establishing the value of a property having a similar prior residential use.

(6) In any appeal or submission to arbitration authorized by this section, there shall be no presumption in favor of any pending valuation.

Source: L. 64: R&RE, p. 713, § 1. C.R.S. 1963: § 137-8-6. L. 70: p. 386, § 23. L. 77: (2) amended, p. 1736, § 19, effective June 20. L. 83: (2) amended, p. 2087, § 5, effective October 13. L. 85: Entire section amended and (2) amended, pp. 1228, 1230, §§ 2, 1, effective July 1. L. 88: (1) and (2) amended, (3) R&RE, and (4) added, pp. 1302, 1303, §§ 11, 12, effective April 29. L. 89: (1) and (2) amended, p. 1458, § 17, effective June 7. L. 90: (2) amended and (5) added, pp. 1694, 1700, §§ 13, 31, effective June 9. L. 92: (1), (2), and (5)(d) amended, p. 2210, § 8, effective June 3. L. 96: (1), (2), and (5)(a) amended and (6) added, p. 723, § 7, effective May 22. L. 2002: IP(5) amended and (5)(e) added, p. 843, § 4, effective August 7. L. 2003: (1) amended, p. 1467, § 4, effective July 1.

Editor's note: Amendments to subsection (2) by House Bill 85-1106 and Senate Bill 85-85 were harmonized.

Cross references: For right to judicial review under the "State Administrative Procedure Act", see § 24-4-106.

ANNOTATION

Law reviews. For article, "Appealing Property Tax Assessments", see 15 Colo. Law. 798 (1986).

"Petitioner" refers to taxpayer. In § 39-8-106 and this section, the term "petitioner" refers to taxpayer. *Adams County Bd. of County Comm'rs v. Union P. R. R.*, 34 Colo. App. 156, 525 P.2d 1202 (1974).

Subsection (2) expressly authorizes a county board of equalization to seek judicial review of procedural errors or errors of law made by the board of assessment appeals. A board of equalization is the "respondent" in proceedings before the board of assessment appeals. *SecurityLink from Ameritech, Inc. v. City*

and County of Denver, 32 P.3d 499 (Colo. App. 2000).

The board of equalization may seek judicial review of a decision of the board of assessment appeals within 45 days of the final order, but only if the board of assessment appeals recommended that the case involved an issue of statewide concern or that the ruling would result in a significant decrease in the total valuation of the count. Absent such a recommendation, the board of equalization was required to seek judicial review within 30 days of the final order. *Steamboat Ski & Resort Corp. v. Routt County Bd. of Equaliz.*, 23 P.3d 1258 (Colo. App. 2001).

Property tax valuation challenge. A taxpayer has the statutory right to challenge a property tax valuation for each tax year under the protest and adjustment procedure and possibly through de novo evidentiary proceedings before the board of assessment appeals. *Weingarten v. Bd. of Assess. Appeals*, 876 P.2d 118 (Colo. App. 1994).

Taxpayer may seek review at each stage of decision-making process. It is evident from § 39-8-106 and this section that the general assembly contemplated that at each stage of the decision-making process the taxpayer could seek review of an adverse decision. *Adams County Bd. of County Comm'rs v. Union P. R. R.*, 34 Colo. App. 156, 525 P.2d 1202 (1974).

A party may seek review of only the total valuation for assessment and not of the component parts of that total. The statutes speak only of the right to appeal the value or the valuation assessment set by the assessor. Notably absent from the statutes is language that would permit a party to limit the scope of the protest by appealing only a portion or component of the assessed value. *Cherne v. Bd. of Equaliz.*, 885 P.2d 258 (Colo. App. 1994).

Joinder of indispensable parties. Part of the perfection of an action for judicial review includes the joinder of indispensable parties. *Cissell v. Bd. of Assess. Appeals*, 38 Colo. App. 560, 564 P.2d 124 (1977).

Statute specifying judicial review in the district court of the county in which the property is located applies only when, prior to payment of any taxes, the taxpayer seeks an adjustment of taxes assessed against property and is not applicable when the taxpayer has paid taxes on property and proceeds for a tax refund. *Gunnison County v. Bd. of Assess. Appeals*, 693 P.2d 400 (Colo. App. 1984).

Subsection (2) limits judicial review to certain specific circumstances. Where the case does not involve a matter of statewide concern or result in a significant decrease in the total assessed valuation of the taxing entity, and the board of assessment appeals' ruling is supported by the evidence, no judicial review is authorized. *Denver v. Bd. of Assess. Appeals*, 802 P.2d 1109 (Colo. App. 1990).

1989 amendment to statutory appeal procedures demonstrated intent of general assembly to expand circumstances under which taxing authority may initiate an appeal of an adverse decision of the board of assessment appeals. *Farny v. Bd. of Equaliz.*, 985 P.2d 106 (Colo. App. 1999).

A claim that evidence is legally insufficient to support the board's decision is a claim based on an alleged "error of law" and is appealable by the taxing authority to the court of appeals pursuant to subsection (2). *Farny v. Bd. of Equaliz.*, 985 P.2d 106 (Colo. App. 1999).

A failure by the board to apply the correct legal standards or to abide by the statutory scheme would constitute an error reviewable by the court. *Clarke v. Douglas County Bd. of Equaliz.*, 899 P.2d 240 (Colo. App. 1994), rev'd on other grounds, 921 P.2d 717 (Colo. 1996).

Section does not give state property tax administrator the right to appeal from adverse decisions pertaining to exemption from taxes. *Maurer v. Young Life*, 751 P.2d 653 (Colo. App. 1987), aff'd in part and rev'd in part on other grounds, 779 P.2d 1317 (Colo. 1989); *Maurer v. Loyal Order of Moose Lodge*, 779 P.2d 1345 (Colo. 1989).

Taxpayer failed to preserve property-classification issue for review when he did not appeal or cross-appeal from board of assessment appeals' ruling on that issue. *Gyurman v. Weld County Bd. of Equaliz.*, 851 P.2d 307 (Colo. App. 1993).

Thirty-day time limit for filing appeal with the board of assessment appeals begins to run on the date of the mailing of the board of equalization's decision directly to the taxpayer. *Tri-Havana LLC v. Arapahoe County Bd. of Equaliz.*, 961 P.2d 604 (Colo. App. 1998).

Thirty-day time limit for filing appeal with court of appeals in tax assessment cases is applicable only if initial appeal was made directly to district court with no intervening appeal to state board of assessment appeals. *Denver v. Bd. of Assess. Appeals*, 748 P.2d 1306 (Colo. App. 1987).

Apart from timely filing requirement, there are no other statutory jurisdictional requirements for taking administrative appeals before the board of assessment appeals. *Fleisher-Smyth v. Bd. of Assess. App.*, 865 P.2d 922 (Colo. App. 1993).

Proceedings before the board of assessment appeals are de novo in nature and an appeal of a classification decision of the board is thus limited to review of the propriety of the board's classification decision without regard to the prior decision of the county assessor. *Johnston v. Park County Bd. of Equaliz.*, 979 P.2d 578 (Colo. App. 1999).

Trial de novo under this section does not mean review but means an entirely independent determination of the facts. *Arapahoe P'ship v. Bd. of County Comm'rs*, 813 P.2d 766 (Colo. App. 1990).

Taxpayers protesting a tax assessment in the trial de novo must prove by a preponderance of the evidence that the assessment is incorrect. *Arapahoe P'ship v. Bd. of County Comm'rs*, 813 P.2d 766 (Colo. App. 1990).

A taxpayer must prove by a preponderance of the evidence only that an assessment is incorrect to prevail at a board of assessment appeals proceeding and is not required to establish an appropriate basis for an alternative reduced valuation for the property at issue. Bd. of

Assess. Appeals v. Sampson, 105 P.3d 198 (Colo. 2005).

The board of assessment appeals is not bound by any valuation methodology or results from a prior ruling valuing the taxpayer's property. Lawrence v. Bd. of Equaliz., 989 P.2d 232 (Colo. App. 1999).

The board of equalization was a necessary party to de novo proceedings in district court, but dismissal of the action was not the appropriate remedy for nonjoinder of the board; rather the court should join the necessary party or allow plaintiff an opportunity to do so. B.C., Limited, et al. v. Krinhop, 815 P.2d 1016 (Colo. App. 1991).

Dismissal without prejudice of appeal for trial de novo may constitute a final, appealable order if, during the pendency of the appeal, a limitations period has expired and the case may not be refiled because it is time-barred. Wyler/Pebble Creek Ranch v. Colo. Bd. of Assess. Appeals, 883 P.2d 597 (Colo. App. 1994).

Trial court's consideration of assessor's reference library, consisting of manuals and directives, was not inconsistent with the conduct of a trial de novo. Amax v. Grand County Bd. of Equaliz., 892 P.2d 409 (Colo. App. 1994), rev'd on other grounds sub nom. Huddleston v. Grand County Bd. of Equaliz., 913 P.2d 15 (Colo. 1996).

Protest and adjustment procedures are separate and independent from abatement and refund procedures. An appeal for a trial de novo under this section is not an "alternate petition" for abatement or refund under § 39-10-114 (1)(a)(I). Wyler/Pebble Creek Ranch v. Colo. Bd. of Assess. Appeals, 883 P.2d 597 (Colo. App. 1994).

Applied in BA Leasing Corp. v. Bd. of Assess. Appeals, 653 P.2d 80 (Colo. App. 1982); Laredo Hous. Apts., Ltd. v. Bd. of Assm't. Appeals, 675 P.2d 23 (Colo. App. 1983); Arapahoe Cty. Bd. of Equaliz. v. Podoll, 935 P.2d 14 (Colo. 1997).

39-8-108.5. Arbitration of property valuations - arbitrators - qualifications - procedures. (1) (a) In order to give taxpayers an alternative to pursuing an appeal of the county board of equalization's decision through either the board of assessment appeals or the district court, an arbitration process shall be established. The board of county commissioners shall develop a list of persons who shall be qualified to act as arbitrators of property valuation disputes. Such list shall be kept in the office of the county clerk and recorder.

(b) Except as otherwise provided in paragraph (c) of this subsection (1), persons on such list shall be, in addition to any other qualifications deemed necessary by the board, experienced in the area of property taxation, on and after June 1, 1993, be registered, licensed, or certificated pursuant to part 7 of article 61 of title 12, C.R.S., and be any one of the following:

(I) An attorney licensed to practice law in the state;

(II) An appraiser who is a member of the institute of real estate appraisers or its equivalent;

(III) A former county assessor;

(IV) A retired judge;

(V) A licensed real estate broker.

(c) No person shall act as an arbitrator of property valuation disputes in any county during any property tax year in which such person represents or has represented any taxpayer in any matter relating to the protest and appeal of property valuation or to the abatement or refund of property taxes.

(2) (a) Within thirty days of the county board of equalization's decision, any taxpayer who plans to pursue arbitration shall notify the board of his intent. The taxpayer and the county board of equalization shall select an arbitrator from the list prepared pursuant to subsection (1) of this section within forty-five days of the county board of equalization's decision or within thirty days from the date the list of arbitrators is made available in any given year, whichever is later. In the absence of agreement by the taxpayer and the county board of equalization within said specified time period, the district court of the county in which the property is located shall select an arbitrator from said list.

(b) If a taxpayer acts pursuant to paragraph (a) of this subsection (2), the county board of equalization shall be required to participate in arbitration and to accept the arbitrator selected.

(3) (a) Arbitration hearings shall be at a time and place set by the arbitrator with the mutual consent of the taxpayer and the county board of equalization. The arbitration hearing shall be held within sixty days from the date the arbitrator was selected.

(b) Procedure at arbitration hearings shall be informal, and strict rules of evidence shall not be applied except as necessitated in the opinion of the arbitrator by the requirements of justice. All questions of law and fact shall be determined by the arbitrator.

(b.5) The taxpayer shall produce information to support his contention that the property should be valued differently. The assessor shall produce information to support the basis and amount of his valuation of the property. Both the information of the assessor and the information of the taxpayer shall be considered by the arbitrator in making his decision.

(c) The arbitrator may issue or cause to be issued subpoenas for the attendance of witnesses and for the production of books, records, documents, and other evidence and shall have the power to administer oaths. Subpoenas so issued shall be served and, upon application to the district court by the taxpayer or the county board of equalization or the arbitrator, enforced in the manner provided by law for the service and enforcement of subpoenas in civil actions.

(d) The taxpayer and the county board of equalization shall be entitled to attend, personally or with counsel, and participate in the proceedings. Such participation may include the filing of briefs and affidavits. Upon agreement of both parties, the proceedings may be confidential and closed to the public.

(e) No record of the proceedings is required.

(f) The arbitrator's decision shall be made in accordance with applicable Colorado property tax laws. The arbitrator's decision shall be in writing and signed by the arbitrator.

(g) The arbitrator shall deliver a copy of his decision to the parties personally or by registered mail within ten days of the hearing. Such decision shall be final and not subject to review.

(4) An arbitrator shall be immune from civil liability arising from participation as an arbitrator and for all communications, findings, opinions, and conclusions made in the course of his duties under this section.

(5) (a) An arbitrator's expenses and fees shall not exceed one hundred fifty dollars per case concerning residential real property. For cases concerning any taxable property other than residential real property, an arbitrator's expenses and fees shall be an amount agreed upon by the taxpayer and the county board of equalization.

(b) The arbitrator's fees and expenses, not including counsel fees, incurred in the conduct of the arbitration shall be paid as provided in the decision.

(6) Any decision of the county board of equalization regarding a 1987 property valuation which has been appealed to either the board of assessment appeals or the district court and which has not been heard or adjudicated may be submitted to arbitration pursuant to this section at the request of the taxpayer.

Source: L. 88: Entire section added, p. 1303, § 13, effective April 29; (6) amended, p. 1274, § 11, effective May 29. L. 90: (3)(b.5) added and (3)(f) amended, p. 1697, § 23, effective June 9. L. 92: IP(1)(b) and (2)(a) amended and (1)(c) added, p. 2212, § 9, effective June 3.

39-8-108.7. Review of decision - effect of stipulation by taxpayer - repeal. (Repealed)

Source: L. 88: Entire section added, p. 1274, § 10, effective May 29.

Editor's note: Subsection (2) provided for the repeal of this section, effective July 1, 1989. (See L. 88, p. 1274.)

39-8-109. Effects of board of assessment appeals or district court decision. (1) If upon appeal the appellant is sustained, in whole or in part, then the appellant shall provide a copy of the order or judgment of the board of assessment appeals or district court, as the case may be, to the county assessor. If the order or judgment has been appealed, then the appellant shall present to the county assessor a copy of the original order or judgment of the board of assessment appeals or district court and copies of all further decisions of the board

of assessment appeals, district court, court of appeals, and supreme court. Upon presentation to the treasurer by the county assessor of a copy of the order or judgment of the board of assessment appeals or district court, as the case may be, and, if the case has been appealed, copies of all further decisions of the board of assessment appeals, district court, court of appeals, and supreme court, modifying the valuation for assessment of the property, the appellant, identified as the petitioner or plaintiff on the order or judgment of the board of assessment appeals or district court, shall forthwith receive the appropriate refund of taxes and delinquent interest thereon, together with refund interest at the same rate as delinquent interest as specified in section 39-10-104.5. Such refund interest shall only accrue from the date on which payment of taxes and delinquent interest thereon was received by the treasurer. Such refund shall be paid to the appellant even if the appellant is not the current owner of the property. The appellant and the county shall each be responsible for their respective costs in said court or board of assessment appeals, as the case may be.

(2) In the event that the treasurer refunds taxes and interest to the appellant based on a modification of the valuation for assessment of the property pursuant to subsection (1) of this section, the treasurer shall be entitled to reimbursement for the refund of taxes and interest pro rata by all jurisdictions receiving payment thereof and may request reimbursement from the jurisdictions or offset the reimbursements against subsequent payments. The provisions of this subsection (2) shall not apply to a city and county.

Source: L. 64: R&RE, p. 713, § 1. **C.R.S. 1963:** § 137-8-7. **L. 70:** p. 386, § 24. **L. 89:** Entire section amended, p. 1466, § 32, effective June 7. **L. 90:** Entire section amended, p. 1719, § 7, effective June 7; entire section amended, p. 1087, § 55, effective July 1. **L. 92:** Entire section amended, p. 2224, § 7, effective April 9; entire section amended, p. 2185, § 67, effective June 2. **L. 93:** Entire section amended, p. 306, § 6, effective April 7. **L. 2002:** Entire section amended, p. 843, § 5, effective August 7. **L. 2005:** Entire section amended, p. 153, § 1, effective April 5. **L. 2008:** Entire section amended, p. 1247, § 6, effective August 5. **L. 2010:** (1) amended, (SB 10-138), ch. 155, p. 533, § 1, effective August 11.

ANNOTATION

When refund of taxes sought. When a taxpayer's appeal of the imposition of an increased tax on his property is sustained and the board or court's decision occurs after the challenged property tax is due, §§ 39-1-113 and 39-10-114 apply to the refund of taxes paid under this section. Bd. of Assess. Appeals v. Benbrook, 735 P.2d 860 (Colo. 1987).

When appeal is brought under § 39-8-101 et seq., this section provides that the taxpayer receive a refund together with interest thereon at

the rate of 6% per annum. B.A. Leasing Corp. v. State Bd. of Equal., 745 P.2d 254 (Colo. App. 1987), aff'd sub nom. Gates Rubber Co. v. Bd. of Equalization, 770 P.2d 1189 (Colo. 1989).

Whether or not to award costs to a successful appellant remains within the discretionary powers of the board of assessment appeals. Jefferson County Bd. of Equaliz. v. Gerganoff, 241 P.3d 932 (Colo. 2010).

Applied in Am. Mobilehome Ass'n v. Dolan, 191 Colo. 433, 553 P.2d 758 (1976).

ARTICLE 9

State Board of Equalization

Editor's note: This article was repealed and reenacted in 1964. For historical information concerning the repeal and reenactment, see the editor's note before the article 1 heading.

39-9-101.	State board of equalization.	39-9-104.	Correction of errors.
39-9-102.	Meetings of state board of equalization.	39-9-105.	Certification of valuations for assessment.
39-9-103.	Duties of state board - enforcement - reappraisal orders.	39-9-106.	Supervision and administration of property tax laws.
		39-9-107.	Assessment roll to conform.

39-9-108. Judicial review - interest during review.

39-9-109.

Power of state board - waiver of deadline.

39-9-101. State board of equalization. (1) The state board of equalization shall consist of the governor or his designee, the speaker of the house of representatives or his designee, the president of the senate or his designee, and two members appointed by the governor with the consent of the senate. Each of the appointed members shall be a qualified appraiser or a former assessor or a person who has knowledge and experience in property taxation. Said board shall elect a chairman and a vice-chairman; the vice-chairman shall act as chairman in the absence of the chairman.

(2) No more than three members of the state board of equalization shall be affiliated with the same political party. Each member shall receive a per diem allowance of fifty dollars for each day spent attending meetings or hearings of the state board of equalization or otherwise spent discharging his duties as a member of said board; except that no member shall receive the per diem allowance provided for in this subsection (2) for any day for which he receives a per diem allowance from the state under any other statute and except that no member shall receive the per diem allowance provided for in this subsection (2) if he receives a salary from the state for a full-time position with the state. Each member of said board shall receive actual and necessary expenses incurred in performing his duties as a member of said board. The members appointed by the governor shall serve at the pleasure of the governor but shall not serve for more than four consecutive years unless reappointed by the governor and reconfirmed by the senate at the conclusion of said four years. Vacancies in either of the appointed positions on the state board of equalization shall be filled by appointment by the governor with the consent of the senate for the unexpired term.

Source: L. 64: R&RE, p. 715, § 1. C.R.S. 1963: § 137-9-1. L. 83: Entire section amended, p. 1504, § 1, effective June 2.

Cross references: For constitutional grant of powers to the state board of equalization, see § 15 of article X of the state constitution.

39-9-102. Meetings of state board of equalization. (1) The state board of equalization shall meet at a place designated by the chairman, at such times as the chairman may deem necessary.

(2) All sessions of said board shall be conducted in public, and a full and correct record of its proceedings shall be kept, which record shall be a public document and available for public inspection. Opportunity shall be afforded any person to appear before said board to present facts and information for its consideration.

(3) Two weeks before each meeting of the state board of equalization, a news release stating the time and location of the meeting shall be sent throughout the state to radio stations, television stations, and newspapers of general circulation. Not later than two weeks before each meeting, the board shall also mail notice to each assessor and board of county commissioners of a county with regard to the nature of any action it may take pertaining to current year valuations for assessment.

Source: L. 64: R&RE, p. 714, § 1. C.R.S. 1963: § 137-9-2. L. 76: (3) added, p. 763, § 28, effective January 1, 1977. L. 83: (1) amended, p. 2092, § 2, effective September 23. L. 84: (3) amended, p. 1001, § 2, effective March 5. L. 86: (1) amended, p. 1102, § 4, effective March 26.

ANNOTATION

Law reviews. For article, "A Calendar of Tax Procedure in Colorado", see 6 Dicta 17 (July 1929).

Annotator's note. The following annotations include cases decided under this section as it existed prior to its 1964 repeal and reenactment.

Statutory provisions mandatory. Boards of equalization are solely creatures of statute, and, when it is provided that they must meet at a certain time and place and complete the equalization by a certain day, it means exactly what it says; and they lack jurisdiction in acting in violation thereof. *Holly Sugar Corp. v. Bd. of Comm'rs*, 10 F.2d 506 (8th Cir. 1926).

Public nature of hearings does not mean public may participate in all deliberations. The requirement that the proceedings be held in public is much like that which compels a judge to conduct business in open court. He is not

compelled to allow the public to participate in his deliberations. *People ex rel. State Bd. of Equaliz. v. Hively*, 139 Colo. 49, 336 P.2d 721 (1959).

Board may consider any type of evidence.

In the absence of a statutory mandate, boards of equalization are not required to examine witnesses, or base their action upon any particular kind of evidence, but may proceed in their own way, and upon any information satisfactory to them. *Holly Sugar Corp. v. Bd. of Comm'rs*, 10 F.2d 506 (D. Colo. 1926).

39-9-103. Duties of state board - enforcement - reappraisal orders. (1) The state board of equalization shall order reappraisals of classes as provided in section 39-1-105.5, make other orders as provided in said section, and perform such other duties as are provided for in said section.

(2) The state board of equalization shall conduct hearings on petitions filed by the administrator for the reappraisal of one or more classes or subclasses of taxable property pursuant to section 39-2-114. The state board of equalization shall also conduct hearings upon complaints filed by the administrator, upon his own motion or upon petition by any tax-levying authority in this state, concerning valuation for assessment of one or more classes or subclasses of taxable property if a reappraisal has not been conducted or ordered pursuant to the provisions of section 39-2-114. Decisions of the state board of equalization shall be subject to judicial review as provided in section 24-4-106, C.R.S.

(3) Said board may compel compliance with its orders by proceedings in the nature of mandamus, by injunction, or by other appropriate civil remedies.

(4) It is the duty of the state board of equalization to examine and review the valuations for assessment of taxes upon the various classes and subclasses of taxable real and personal property located in the several counties of the state as reflected in the abstract of assessment of each county, the decisions of the board of assessment appeals, the recommendations of the administrator, and, effective January 1, 1983, the study conducted by the director of research of the legislative council pursuant to section 39-1-104 (16).

(5) The decisions of the board of assessment appeals which affect the valuation of classes or subclasses of property may be reversed or modified by the state board of equalization, and such action shall be taken only if a written appeal has, within thirty days of the board of assessment appeals' decision, been lodged with the state board of equalization by one of the parties to the proceedings before the board of assessment appeals. Decisions of the state board of equalization shall be subject to judicial review as provided in section 24-4-106, C.R.S.

(6) The state board of equalization shall conduct hearings upon complaints filed by the property tax administrator, upon his own motion or upon petition by any tax-levying authority in this state, concerning alleged dereliction of duty on the part of a county assessor.

(7) The state board of equalization shall review abstracts of assessment and may, by order, change the valuation for assessment of any class or subclass of property which was changed by a county board of equalization.

(8) The state board of equalization may promulgate such rules and regulations as are necessary for the implementation of its duties and responsibilities. Such rules and regulations shall be promulgated pursuant to and be subject to the provisions of section 24-4-103, C.R.S.

(9) Repealed.

(10) (a) It is the function of the state board of equalization and it shall have and exercise the authority, prior to publication but subsequent to review by the advisory committee to the property tax administrator pursuant to section 39-2-131 (1), to review and approve or disapprove, within thirty days after receipt from said advisory committee to the property tax administrator:

(I) Manuals or any part thereof, appraisal procedures, instructions, and guidelines prepared and published by the administrator pursuant to section 39-2-109 (1) (e) and based upon the approaches to appraisal set forth in section 39-1-103 (5) (a) and pursuant to section 39-2-109 (1) (k); and

(II) Forms, notices, and records approved or prescribed pursuant to the authority of the property tax administrator set forth in section 39-2-109 (1) (d).

(b) Any manuals, appraisal procedures, instructions, guidelines, forms, notices, or records which are not approved or disapproved by the state board of equalization within said thirty days shall be automatically approved; except that, if within said thirty days the state board of equalization schedules a hearing on such manuals, appraisal procedures, instructions, guidelines, forms, notices, or records, such automatic approval shall not occur unless the state board of equalization does not approve or disapprove such manuals, appraisal procedures, instructions, guidelines, forms, notices, or records within thirty days after the conclusion of such hearing.

Source: L. 64: R&RE, p. 714, § 1. C.R.S. 1963: § 137-9-3. L. 70: p. 386, § 25. L. 76: (5) added, p. 763, § 29, effective June 10. L. 77: (3) amended, (5) R&RE, and (6), (7), and (8) added, pp. 1736, 1738, §§ 20, 21, effective June 20; (3) amended, p. 1755, § 2, effective July 23. L. 81: (5) amended, p. 1834, § 13, effective June 12; (1) amended, p. 1398, § 12, effective January 1, 1983. L. 83: Entire section R&RE, p. 1505, § 2, effective June 2; (7) and (8) added, p. 2093, § 3, effective September 23. L. 88: (9) added, p. 1290, § 22, effective May 23. L. 90: (10) added, p. 1699, § 28, effective June 9. L. 91: (10) amended, p. 1954, § 3, effective January 1, 1992. L. 93: (9) repealed, p. 1690, § 9, effective June 6. L. 96: (10) amended, p. 948, § 2, effective July 1.

Editor's note: Amendments to subsection (3) by House Bill 77-1242 and House Bill 77-1452 were harmonized.

Cross references: For right of judicial review under the "State Administrative Procedure Act", see § 24-4-106.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

State board has power of equalization but not assessment. *Union P.R.R. v. Bd. of Comm'rs*, 35 F.2d 785 (1929), cert. denied, 281 U.S. 734, 50 S. Ct. 249, 74 L. Ed. 1149 (1930); *Bohen v. Bd. of Comm'rs*, 109 Colo. 283, 124 P.2d 606 (1942); *BQP Industries v. State Bd. of Equaliz.*, 694 P.2d 337 (Colo. App. 1984).

State board can review the abstract of assessment of a particular county for errors upon recommendation of the property tax administrator when the administrator finds that classes or subclasses of property located in a county have not been correctly valued for assessment as required by law. *Writer Corp. v. State Bd. of Equaliz.*, 771 P.2d 13 (Colo. App. 1988).

Courts are powerless to control right legally exercised. So long as the right to adjust and equalize the valuation of real and personal property is legally exercised, courts are power-

less to control the results. *MacGinnis v. Denver Land Co.*, 90 Colo. 72, 6 P.2d 919 (1931).

It would be impractical and impossible to hold individual hearings following the giving of individual notices at the equalization stage of tax proceedings. Even if time would allow it, individual hearings would, nevertheless, defeat the system, the purpose of which is to equalize valuations on a statewide basis. *People ex rel. State Bd. of Equaliz. v. Hively*, 139 Colo. 49, 336 P.2d 721 (1959).

County assessor obligated to execute board's mandate. A county assessor has no standing to question the validity of the action of the state board of equalization, but he is obligated to carry out the mandate of the board. *People ex rel. State Bd. of Equaliz. v. Hively*, 139 Colo. 49, 336 P.2d 721 (1959).

Applied in *People ex rel. State Bd. of Equaliz. v. Pitcher*, 61 Colo. 149, 156 P. 812 (1916); *Laredo Hous. Apts., Ltd. v. Bd. of County Comm'rs*, 628 P.2d 135 (Colo. App. 1980); *Laredo Hous. Apts., Ltd. v. Bd. of Assmt. Appeals*, 675 P.2d 23 (Colo. App. 1983).

39-9-104. Correction of errors. The state board of equalization shall correct any obvious error appearing in any county abstract of assessment, whether made by the assessor

or by the administrator. The state board of equalization shall not change any matter pertaining to the actual value of any class or subclass except as provided in section 39-9-103 (7); except that, in the taxable year following the year of reappraisal ordered by the state board of equalization, such board may change any matter pertaining to the actual value, and such change shall be made by the assessor in the abstract of assessment of such current taxable year.

Source: L. 64: R&RE, p. 715, § 1. C.R.S. 1963: § 137-9-4. L. 70: p. 387, § 26. L. 77: Entire section amended, p. 1756, § 3, effective July 23. L. 83: Entire section amended, p. 2093, § 4, effective September 23.

39-9-105. Certification of valuations for assessment. (1) No later than December 20 of each year, the state board of equalization shall complete its review of the abstracts of assessment of the several counties of the state, and the chair of the state board of equalization shall thereupon certify to the assessor of each county a statement of the changes, if any, ordered by said board in the abstract of his or her county for the current taxable year and for the next succeeding taxable year and shall also return the abstract of assessment for the current taxable year to each county.

(2) Repealed.

Source: L. 64: R&RE, p. 715, § 1. C.R.S. 1963: § 137-9-5. L. 77: (1) amended, p. 1756, § 4, effective July 23. L. 83: (1) amended, p. 1506, § 3, effective June 2. L. 86: (1) amended, p. 1102, § 5, effective March 26. L. 89: (1) amended, p. 1459, § 18, effective June 7. L. 93: (2) repealed, p. 444, § 1, effective April 19. L. 2000: (1) amended, p. 1502, § 7, effective August 2.

39-9-106. Supervision and administration of property tax laws. The state board of equalization shall have supervision of the administration of all laws concerning the valuation and assessment of taxable property and the levying of property taxes.

Source: L. 64: R&RE, p. 715, § 1. C.R.S. 1963: § 137-9-6.

39-9-107. Assessment roll to conform. Whenever the state board of equalization orders any change in the valuation for assessment of any class or subclass of taxable real or personal property located in a county, the assessor thereof shall make the proper adjustment in individual schedules so that the assessment roll of his county conforms with the statement of changes ordered by said board and certified by the chairman of said board.

Source: L. 64: R&RE, p. 715, § 1. C.R.S. 1963: § 137-9-7. L. 77: Entire section amended, p. 1756, § 5, effective July 23. L. 83: Entire section amended, p. 2093, § 5, effective September 23.

ANNOTATION

Applied in *Lamm v. Barber*, 192 Colo. 511, 565 P.2d 538 (1977).

39-9-108. Judicial review - interest during review. Decisions of the state board of equalization shall be subject to judicial review, as provided in section 24-4-106, C.R.S. Such review shall include the issues of compliance with applicable law and constitutional provisions governing valuation for assessment for property tax purposes and the validity of any valuation for assessment study conducted pursuant to the provisions of section 39-1-104 (16). Parties adversely affected or aggrieved shall include any taxpayer or assessor or the governing body of any taxing jurisdiction. In any case in which excess state equalization payments are made to school districts within the county during the time such review is pending, interest shall be paid to the state on the amount of such excess. Such

interest shall be paid for the period of time from the date of the decision of the state board of equalization to the date of the final determination of all judicial review. Such interest shall be computed at the rate determined by the state bank commissioner pursuant to section 39-21-110.5.

Source: **L. 83:** Entire section added, p. 2093, § 6, effective September 23. **L. 88:** Entire section amended, p. 1282, § 7, effective May 23. **L. 2001:** Entire section amended, p. 1288, § 85, effective June 5.

39-9-109. Power of state board - waiver of deadline.

(1) to (4) Repealed.

(5) Acting by majority vote and when the state board of equalization determines that the interests of justice and equity would be served, the board may authorize the waiver of the July 1 filing deadline described in section 39-2-117 (3) (a) for any annual report required to be filed pursuant to section 39-2-117 if the report is not filed by the filing deadline or if the report is filed by the filing deadline but is incomplete or otherwise incorrect when filed.

Source: **L. 89:** Entire section added, p. 1491, § 5, effective June 7. **L. 95:** (5) added, p. 602, § 1, effective May 22. **L. 2003:** (1) to (4) repealed, p. 867, § 2, effective April 7. **L. 2008:** (5) amended, p. 458, § 2, effective August 5.

Collection and Redemption

ARTICLE 10

Collection

Editor's note: This article was repealed and reenacted in 1964. For historical information concerning the repeal and reenactment, see the editor's note before the article 1 heading.

Law reviews: For article, "Survey of Colorado Tax Liens", see 14 Colo. Law. 1765 (1985).

39-10-101.	Collection of taxes.	39-10-110.5.	Partial payment of delinquent personal property taxes.
39-10-102.	When taxes payable.	39-10-111.	Distrain, sale of personal property - redemption of mobile home.
39-10-103.	Tax statement.	39-10-112.	Action to collect unpaid taxes.
39-10-104.	Payment dates - optional payment dates - failure to pay - penalty - repeal. (Repealed)	39-10-113.	Removal or transfer of personal property - collection of taxes.
39-10-104.5.	Payment dates - optional payment dates - failure to pay - delinquency.	39-10-113.5.	Improvements valued and taxed separately - collection of taxes.
39-10-105.	Receipt for taxes.	39-10-114.	Abatement - cancellation of taxes.
39-10-106.	Payment of taxes on fractional interests in lands.	39-10-114.5.	Decision - review - judicial review.
39-10-107.	Apportionment of taxes, delinquent interest - payment.	39-10-115.	Certificate of taxes due.
39-10-108.	Treasurer responsible for state tax levies.	39-10-116.	Civil penalty for checks not paid upon presentment.
39-10-109.	Delinquent tax list - notice.		
39-10-110.	Publication of delinquent taxes.		

39-10-101. Collection of taxes. (1) Upon receipt of the tax list and warrant from the assessor, the treasurer shall proceed to collect the taxes therein levied, and such tax list and warrant shall be his authority and justification against any illegality in procedure prior to his receiving the same.

(2) (a) (I) If, after the tax list and warrant has been received by the treasurer, the

treasurer discovers that any taxable property then located in the treasurer's county has been omitted from the tax list and warrant for the current year or for any prior year and has not been valued for assessment, the treasurer shall forthwith list and value such property for assessment in the same manner as the assessor might have done and shall enter such valuation for assessment on the tax list and warrant and extend the levy. Such entry shall be designated as an additional assessment and shall be valid for all purposes, the same as though performed by the assessor.

(II) Notwithstanding subparagraph (I) of this paragraph (a) or section 39-5-125, neither the assessor nor the treasurer shall treat any possessory interest in exempt property as taxable property omitted from the tax list and warrant for any property tax year prior to 2001.

(b) (I) Except as provided in subparagraph (II) of this paragraph (b), the taxes for any period, together with interest thereon, imposed by this section shall not be assessed, nor shall any lien be filed or distraint warrant issued or suit for collection be instituted or any other action to collect the same be commenced, more than six years after the date on which the tax was or is payable. Except as otherwise provided in paragraph (d) of this subsection (2), interest shall not be charged prior to the date on which additional assessment is made.

(II) Effective January 1, 1996, the taxes for any period, together with interest thereon, imposed by this section shall not be assessed, nor shall any lien be filed or distraint warrant issued or suit for collection be commenced, more than two years after the date on which the tax was or is payable when the failure to collect the tax is due to an error or omission of a governmental entity. The provisions of this subparagraph (II) shall not apply to taxes imposed on oil and gas leaseholds and lands.

(c) In the case of fraudulent action with intent to evade tax, the tax, together with interest thereon, may be assessed, or proceedings for the collection of such taxes may be begun, at any time.

(d) Taxes levied upon additional assessments on mines and on oil and gas leaseholds and lands which had been previously omitted from the tax list and warrant due to the failure of an owner or operator of any mine or of any oil and gas leaseholds and lands to comply with section 39-6-106, 39-6-113, or 39-7-101 shall be subject to the delinquent interest provisions of section 39-10-104.5. Delinquent interest shall be calculated to accrue from the date the taxes were due pursuant to section 39-1-105 and section 39-6-106, 39-6-113, or 39-7-101. This paragraph (d) shall apply to omitted property or production but shall not apply to valuation disputes, protests, or appeals therefrom filed pursuant to section 39-5-122.

(3) If on the tax list and warrant there is any error in the name of a person owing taxes, the treasurer may correct such error and collect the taxes from the person intended.

(4) and (5) Repealed.

Source: L. 64: R&RE, p. 715, § 1. C.R.S. 1963: § 137-10-1. L. 73: p. 238, § 21. L. 75: (4) repealed, p. 1473, § 30, effective July 18; (2) amended, p. 1478, § 2, effective July 30. L. 90: (5) added, p. 1719, § 9, effective June 7. L. 92: (2)(b) amended and (2)(d) added, p. 2238, § 1, effective April 10. L. 94: (5) repealed, p. 753, § 1, effective April 20. L. 95: (2)(b) amended, p. 35, § 1, effective March 17. L. 96: (2)(b)(II) amended, p. 18, § 4, effective February 22; (2)(a) amended p. 1855, § 5, effective June 5. L. 2002: (2)(a)(II) amended, p. 1009, § 4, effective August 7.

ANNOTATION

Law reviews. For article, "A Calendar of Tax Procedure in Colorado", see 6 Dicta 17 (July 1929).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Statutory procedures established for collection of real estate taxes are exclusive. Skid-

more v. O'Rourke, 152 Colo. 470, 383 P.2d 473 (1963).

They are comprehensive and detailed. This article, outlining the steps to be taken by county treasurers to obtain the amount of taxes levied, is very comprehensive and detailed. Skidmore v. O'Rourke, 152 Colo. 470, 383 P.2d 473 (1963).

Subsection (2)(a) of this section and § 39-

5-125 authorize retroactive assessments of additional property taxes only against "omitted property" and not against "omitted value". Cabot Petroleum Corp. v. Yuma County Bd. of Equaliz., 847 P.2d 152 (Colo. App. 1992), rev'd on other grounds, 856 P.2d 844 (Colo. 1993); In Stitches, Inc. v. Denver County Bd. of County Comm'rs, 62 P.3d 1080 (Colo. App. 2002).

Authority to charge delinquent interest upon additional assessments previously omitted from the tax list and warrant due to the failure of an owner to comply with § 39-6-106 did not create a new duty on taxpayers, but only substituted a new remedy, and therefore the 1992 amendment authorizing such interest was constitutional, and not a law retrospective in its

operation. Shell Western E&P, Inc. v. Bd. of County Comm'rs of Dolores County, 923 P.2d 251 (Colo. App. 1995).

Under the doctrine of equitable tolling, county taxpayer cannot assert statute of limitations as a defense when taxpayer fails to file the tax declaration schedules required by statute. Shell Western E&P v. Dolores County Bd. of Comm'rs, 948 P.2d 1002 (Colo. 1997).

Requiring the payment of interest from a time prior to the effective date of this section is not unconstitutional when the tax obligation upon which the interest accrued was assessed after this section's effective date. Shell Western E&P v. Dolores County Bd. of Comm'rs, 948 P.2d 1002 (Colo. 1997).

39-10-102. When taxes payable.

(1) (a) Repealed.

(b) (I) Except as otherwise provided in article 1.5 of this title, all property taxes shall become due and payable on January 1 of the year following that in which they are levied and shall become delinquent on June 16 of said year.

(II) This paragraph (b) is effective January 1, 1992.

(2) Except as otherwise provided in article 1.5 of this title, the treasurer shall accept payment of taxes tendered by any person and issue a receipt therefor at any time after the tax list and warrant have come into his hands.

Source: L. 64: R&RE, p. 716, § 1. C.R.S. 1963: § 137-10-2. L. 81: Entire section amended, p. 1841, § 3, effective May 28. L. 90: (1) amended, p. 1716, § 1, effective June 7; (1) amended, p. 1085, § 49, effective July 1.

Editor's note: Subsection (1)(a)(II) provided for the repeal of subsection (1)(a), effective January 1, 1992. (See L. 90, p. 1716.)

ANNOTATION

Law reviews. For article, "One Year Review of Constitutional Law", see 40 Den. L. Ctr. J. 134 (1963).

39-10-103. Tax statement. (1) (a) As soon as practicable after January 1, the treasurer shall, at the treasurer's discretion, mail or send electronic notification to each person whose name appears on the tax list and warrant a statement or true and actual notice of electronic statement availability, as applicable, showing the total amount of taxes payable by such person, which statement shall separately list the amount of taxes levied on real and personal property and shall recite the actual value of the property and the amount of valuation for assessment upon which such taxes were levied. If any of the personal property upon which taxes are to be levied is a mobile home, the tax statement shall contain the following notice: "This property may not be moved without a valid permit or prorated tax receipt and a transportable manufactured home permit from the county treasurer's office. Violators shall be prosecuted." Failure of any person to receive such statement or true and actual notice of an electronic statement, as applicable, shall not preclude collection by the treasurer of the amount of taxes due from and payable by such person. Such statement shall include a notice that, if such person desires a receipt for payment of taxes, the person shall request such receipt. The statement may also state what each mill levy would have been for each taxing district for the prior tax year based upon the current year's valuation for assessment.

(b) On and after January 1, 1988, each taxpayer's statement required by paragraph (a)

of this subsection (1) shall also separately list the mill levies and the amount of taxes to be credited to the state, the county, municipalities, school districts, special districts, and other districts within the county which are applicable to his property. This paragraph (b) shall be applicable for statements for 1987 taxes payable in 1988 and for each statement thereafter.

(2) Each person whose name appears on the tax list and warrant shall be informed in writing of the actual school district general fund mill levy and the school district general fund mill levy in absence of funds estimated to be received by school districts pursuant to the "Public School Finance Act of 1994", article 54 of title 22, C.R.S., and the estimated funds to be received for the general funds of districts from the state.

(3) Repealed.

(4) Notwithstanding any other provision of law, a taxpayer may request to receive by electronic transmission the statement required by subsection (1) of this section. The taxpayer shall submit along with the request an electronic address to which the treasurer may send future statements. The treasurer, upon receipt of such request by a taxpayer to receive statements electronically, may send all future statements by electronic transmission to the electronic address supplied by the taxpayer; except that, if a taxpayer subsequently requests to cease the electronic transmission of such statements and requests to receive future statements by mail, the treasurer shall comply with the request. Failure of a taxpayer to receive the electronic statement shall not preclude collection by the treasurer of the amount of taxes due from and payable by the taxpayer.

Source: L. 64: R&RE, p. 716, § 1. C.R.S. 1963: § 137-10-3. L. 77: Entire section amended, p. 1761, § 2, effective June 2; entire section amended, p. 1739, § 22, effective June 20. L. 78: Entire section amended, p. 373, § 10, effective July 1. L. 85: (1) amended, p. 1232, § 1, effective April 5. L. 88: (2) amended, p. 824, § 38, effective May 24. L. 89: (2) amended, p. 971, § 23, effective June 7. L. 90: (3) added, p. 1716, § 2, effective June 7; (3) added, p. 1085, § 50, effective July 1, 1990. L. 91: (1)(a) amended, p. 1695, § 2, effective July 1. L. 94: (2) amended, p. 825, § 56, effective April 27; (2) amended, p. 1646, § 81, effective May 31. L. 96: (1)(a) amended, p. 724, § 8, effective May 22. L. 2004: (3) repealed, p. 207, § 30, effective August 4. L. 2010: (1)(a) amended and (4) added, (HB 10-1117), ch. 195, p. 842, § 3, effective August 11.

Editor's note: Amendments to this section by House Bill 77-1324 and House Bill 77-1452 were harmonized. Amendments to subsection (3) by Senate Bill 90-211 superseded by House Bill 90-1314. Amendments to subsection (2) by House Bill 94-1001 and Senate Bill 94-206 were harmonized.

39-10-104. Payment dates - optional payment dates - failure to pay - penalty - repeal. (Repealed)

Source: L. 64: R&RE, p. 716, § 1. C.R.S. 1963: § 137-10-4. L. 71: p. 327, § 3. L. 73: p. 1433, § 3. L. 77: (1), (2), (3), and (5) amended and (6) added, p. 1763, § 1, effective April 7; (1)(b), (2)(b), (3)(b), and (5)(b) repealed, p. 1763, § 1, effective March 1, 1978. L. 79: (6) repealed, p. 1641, § 54, effective July 19; (2)(a), (3)(a), and (5)(a) amended and (7) and (8) added, pp. 1420, 1421, 1423, §§ 1, 2, 3, effective January 1, 1980. L. 81: (9) added, p. 1860, § 1, effective March 20; (7) amended, p. 1859, § 1, effective March 27. L. 83: (1)(a) amended and (5.5) added, p. 1509, § 1, effective May 23. L. 90: (10) added, p. 1717, § 3, effective June 7; (10) added, p. 1085, § 51, effective July 1.

Editor's note: Subsection (10) provided for the repeal of this section, effective January 1, 1992. (See L. 90, pp. 1085, 1717.)

39-10-104.5. Payment dates - optional payment dates - failure to pay - delinquency.
(1) The provisions of this section, as amended, are effective January 1, 1994.

(2) Except as provided in subsections (6), (7), and (11) of this section, at the option of the taxpayer, property taxes may be paid in full or in two equal installments, the first such

installment to be paid on or before the last day of February and the second installment to be paid no later than the fifteenth day of June.

(3) (a) If the first installment is not paid on or before the last day of February, then delinquent interest on the first installment shall accrue at the rate of one percent per month from the first day of March until the date of payment; except that, if payment of the first installment is made after the last day of February but not later than thirty days after the mailing by the treasurer of the tax statement, or true and actual notification of an electronic statement, pursuant to section 39-10-103 (1) (a), no such delinquent interest shall accrue. If the second installment is not paid by the fifteenth day of June, delinquent interest on the second installment shall accrue at the rate of one percent per month from the sixteenth day of June until the date of payment. Interest on the first installment shall continue to accrue at the same time that interest is accruing on the unpaid portion of the second installment. The taxpayer shall continue to have the option of paying delinquent property taxes in two equal installments until one day prior to the sale of the tax lien on such property pursuant to article 11 of this title.

(b) Notwithstanding the provisions of paragraph (a) of this subsection (3), if the full amount of taxes is paid in a single payment on or before the last day of April, then no delinquent interest shall accrue on any portion of the taxes. If the full amount of taxes is paid in a single payment after the last day of April, interest shall be added to the full amount of taxes due in the amount of one percent per month which shall accrue from the first day of May until the date of payment.

(c) Interest shall be calculated on delinquent taxes as provided in paragraphs (a) and (b) of this subsection (3) as specified in the following table:

Required Date of Payment	Last Day of February	June 15	April 30
Month Paid	Half Tax Option 1st Installment	Option 2nd Installment	Full Tax Option*
March	1%	_____	_____
April	2%	_____	_____
May	3%	_____	1%
June 1 - 15	4%	_____	2%
June 16 - 30	4%	1%	2%
July	5%	2%	3%
August	6%	3%	4%
September	7%	4%	5%
October	8%	5%	6%
November	9%	6%	7%
December	10%	7%	8%

*Total taxes less than \$25.00 must be paid using the Full Tax Option.

(4) (Deleted by amendment, L. 93, p. 303, § 1, effective April 7, 1993.)

(5) In computing the amount of delinquent interest due under this section, portions of months shall be counted as whole months.

(6) There shall be no installment payment of property taxes totaling less than twenty-five dollars, and such taxes shall be paid in full no later than the last day of April. If such taxes are not paid prior to the last day of April, delinquent interest on the amount thereof shall accrue at the rate of one percent per month from the first day of May until the date of payment.

(7) The treasurer shall be authorized to accept funds paid by the seller and accepted by the dealer as a partial payment of taxes which have not yet been levied and which are not yet due but which have been prorated between the buyer and the seller at the time of the sale of a mobile home. A dealer shall remit taxes collected under this subsection (7) to the treasurer within ten days.

(8) Any payment under this section shall be deemed received by the treasurer on the date that the installment or full payment, including any penalties or fees due, is actually received in the treasurer's office, and actual receipt will be presumed as of the date of the United States postal service postmark. Where a payment is received through the mail or a common carrier but has no United States postal service postmark and the payment is actually received in the treasurer's office no later than five days after the due date, the treasurer shall record the date of payment as the due date of the payment. Where the payment is received through the mail or a common carrier but has no United States postal service postmark and the payment is actually received in the treasurer's office six or more days after the due date, the treasurer shall record the date of payment as the date the payment was received. If the date for filing any tax return or remittance falls upon a Saturday, Sunday, or legal holiday, it shall be deemed to have been timely filed if filed on the next business day.

(9) An additional charge may be added to any delinquent taxes totaling less than fifty dollars including all delinquent interest and other charges. Such charge shall be for the purpose of covering the administrative costs and fees incurred by the county in collecting such delinquencies and shall be determined by the board of county commissioners or such other body as authorized by the city and county of Denver or as authorized by the city council of the city and county of Broomfield. Such charge shall not exceed twenty-five dollars in any case and shall be limited to such amount less than twenty-five dollars as may be necessary to limit the total charges against such property, including taxes, delinquent interest, and the charge authorized by this subsection (9), to no more than fifty dollars. Charges imposed under the authorization of this subsection (9) shall be a lien under section 39-1-107.

(10) The treasurer may refrain from collecting any penalty, delinquent interest, or costs where the amount to be collected is fifty dollars or less. Nothing in this subsection (10) shall be construed as releasing any person from the payment of any tax, assessment, penalty, delinquent interest, or costs or any other moneys which are due and owing and which the treasurer is authorized by law to collect.

(11) Repealed.

Source: **L. 90:** Entire section added, pp. 1085, 1717, §§ 52, 4, effective January 1, 1992. **L. 92:** (3) to (6), (9), and (10) amended, p. 2226, § 9, effective April 9. **L. 93:** (1) to (4) amended, p. 303, § 1, effective April 7; (2) amended and (11) added, p. 346, § 3, effective April 12. **L. 94:** (8) amended, p. 753, § 2, effective April 20. **L. 98:** (11) repealed, p. 829, § 52, effective August 5. **L. 2000:** (3)(a) amended, p. 81, § 1, effective March 10. **L. 2001:** (9) amended, p. 269, § 17, effective November 15. **L. 2005:** (8) amended, p. 254, § 1, effective April 14. **L. 2006:** (10) amended, p. 26, § 1, effective March 13. **L. 2010:** (8) amended, (HB 10-1046), ch. 16, p. 77, § 1, effective March 5; (3)(a) amended, (HB 10-1117), ch. 195, p. 843, § 4, effective August 11.

Editor's note: (1) Amendments to subsection (2) by Senate Bill 93-90 and House Bill 93-1040 were harmonized.

(2) Subsection (11), referenced in subsection (2), was repealed, effective August 5, 1998, but has been left in for historical purposes.

ANNOTATION

Law reviews. For article, "Collecting Pre- and Post-Judgment Interest in Colorado: A Primer", see 15 Colo. Law. 753 (1986). For

article, "An Update of Appendices from Collecting Pre- and Post-Judgment Interest in Colorado", see 15 Colo. Law. 990 (1986).

39-10-105. Receipt for taxes. (1) Upon request of an individual taxpayer or the taxpayer's agent, the treasurer shall issue and shall mail, if additionally requested, a receipt for each payment of taxes received, which shall state the amount of taxes paid and any delinquent interest thereon, the year or portion thereof for which such taxes apply, the property upon which such taxes are paid, and a notation of any taxes levied thereon for prior years which are unpaid and delinquent. A copy of the statement specified in section 39-10-103, when stamped "paid" by the treasurer, shall suffice for such receipt. The apportionment of the total tax levy may be printed or stamped on the reverse side of each tax receipt issued or may be separately furnished to the taxpayer. The mortgagee or beneficiary of a deed of trust is not required to retain a tax receipt for the property which is the subject of the mortgage or the deed of trust.

(1.5) In lieu of issuing and mailing individual receipts, the treasurer may issue and mail a certified listing of taxes paid and any delinquent interest thereon, the year or portion thereof for which such taxes apply, and sufficient identification of the property upon which such taxes are paid to those taxpayers or their agents for combined tax payments on ten or more assessed parcels.

(2) The treasurer shall retain in the office as part of the records thereof a copy of every receipt issued by the treasurer for taxes paid, which copies shall be recorded or filed in the order of issuance. The original tax receipt, or a copy thereof, or a copy of any entry in the treasurer's records concerning the same shall, when certified by the treasurer or the treasurer's deputy, be received in all places as prima facie evidence of payments of the taxes. For purposes of this section, "copy" means a reproduction of the original by any means, including, but not limited to, a photograph, a microfilm or optical imaging record, a computer disk image, or any other means of record retention chosen by the treasurer.

(3) When request is made of the treasurer for copies of tax receipts, a fee shall be collected for each copy of a receipt issued, as provided in section 30-1-102, C.R.S.

Source: L. 64: R&RE, p. 717, § 1. C.R.S. 1963: § 137-10-5. L. 71: p. 327, § 4. L. 75: (1.5) added, p. 1479, § 3, effective July 1. L. 77: (1) and (1.5) amended, p. 1761, § 3, effective June 2. L. 92: (1) and (1.5) amended, p. 2226, § 10, effective April 9. L. 94: (1) and (2) amended, p. 754, § 3, effective April 20.

39-10-106. Payment of taxes on fractional interests in lands. (1) Where oil, gas, or other hydrocarbon wells or fields belonging to multiple owners are operated as a unit, the owner of each fractional interest in such units shall be liable for the same proportion of the tax levied against the total unit that his net taxable revenues received therefrom bears to the total net taxable revenues received from such unit. In the event a fractional interest owner who takes production in kind does not provide the information to the operator which is required under section 39-7-101 (1.5), such fractional interest owner's tax liability shall be calculated using the net taxable revenues reported by the operator.

(2) The unit operator shall collect from the owners of the fractional interests and remit to the treasurer of the county in which the unit is located the tax levied against the entire unit. The unit operator may deduct and withhold from royalty payments or any other payments made to any fractional interest owner, either in kind or in money, the estimated amount of the tax to be paid by such fractional interest owner. Any difference between the estimated tax so withheld and the actual tax payable by any owner of a fractional interest may be accounted for by adjustments in royalty or other payments made to such owner subsequent to the time the actual tax is determined. Failure of the unit operator to remit to the treasurer the tax levied against the entire unit shall make the unit operator liable for such tax.

(3) At the request of any unit operator who does not disburse payments to fractional interest owners, the first purchaser shall collect the tax from the fractional interest owners as provided for in this section and transfer such proceeds to the unit operator who shall in turn be responsible for remitting to the treasurer the total tax levied against the entire unit.

(3.5) (a) Except as otherwise provided in paragraph (b) of this subsection (3.5), the unit operator shall place in an account in a federally insured bank or savings and loan association located in the state of Colorado which requires two signatures, one of which shall be the signature of the county treasurer of the county in which the unit is located, in order to make a withdrawal, an amount equal to the tax collected from the owners of fractional interests in the unit by the unit operator pursuant to the provisions of this section plus the proportional share of tax levied on the fractional interest in the unit owned by the unit operator. Such account shall be owned by the owners of fractional interests in the unit, but the unit operator shall be responsible for managing such account. The moneys shall be deposited in such account within thirty days from the date the unit operator receives payment for the sale of any oil or gas from such lease.

(b) The treasurer may waive the requirement of placing the tax in such account or fund as required in paragraph (a) of this subsection (3.5) and allow the unit operator to file a statement with the treasurer declaring that a sufficient amount of moneys or other assets is available to ensure the payment of the tax if:

(I) The unit operator has made timely payment of the tax to the treasurer during the previous three property tax years;

(II) The unit operator has been in operation in the county for less than three property tax years and has made timely payment of the tax to the treasurer during such period of time; or

(III) The unit operator has been in operation in the county for less than one property tax year.

(c) Upon the completion of all production of oil and gas from the unit and after all wells within the unit are plugged and abandoned, all moneys remaining in the account after full payment of all ad valorem taxes due on the unit shall be distributed to the owners of fractional interests in the unit based upon each owner's proportional contribution to the moneys remaining in the account. Any interest accruing to the account shall be credited to the account and shall be distributed with such other moneys in the account as specified in this paragraph (c).

(4) (a) Failure of the unit operator or first purchaser to collect the tax as provided in this section shall not preclude the treasurer from utilizing lawful collection and enforcement remedies and procedures against the owner of any fractional interest to collect the tax owed by such owner; but an owner shall not be subject to penalty or interest upon the tax owed unless he fails to remit such tax within twenty days after notification to him by the treasurer of the default of the first purchaser or unit operator.

(b) (I) When the tax has been collected from the owners of fractional interests by the unit operator pursuant to the provisions of this section but the unit operator fails to remit such tax collected, the unit operator shall remain liable for the amount of tax owed. The treasurer shall send a notice by registered mail to the first purchaser of the amount of such delinquent taxes and the name of the unit operator owing such delinquent tax. After receiving such notice, the first purchaser shall withhold payments to the unit operator owing the taxes of any of the proceeds of the sale of any oil and gas from such lease. The first purchaser shall remit such withheld payments to the treasurer until the amount of such taxes and penalties are paid in full, after which the first purchaser may resume such payments to the unit operator for such oil and gas.

(II) If the first purchaser fails to collect the tax after receiving notice from the treasurer pursuant to the provisions of this paragraph (b) or when the tax has been collected by the first purchaser pursuant to the provisions of this section but the first purchaser fails to transfer the tax to the unit operator pursuant to subsection (3) of this section or to the treasurer pursuant to subparagraph (I) of this paragraph (b), the first purchaser shall remain liable for the amount of tax owed. The treasurer may utilize lawful collection and enforcement remedies and procedures against any first purchaser to collect the amount of such taxes and penalties owed by such first purchaser.

(III) The tax liability of the owner of any fractional interest in such unit whose proportionate share of tax was withheld from royalty or working interest payments by the unit operator or the first purchaser but was not remitted by the unit operator or by the first purchaser to the treasurer shall be deemed satisfied to the extent of the amount withheld, and such owner shall not be subject to any collection and enforcement remedies and procedures provided by law for the collection of such delinquent tax for which an amount was withheld from royalty or working interest payments pursuant to the provisions of this section. Any unit operator or first purchaser who has collected the tax from the fractional interest owners pursuant to the provisions of this section but has failed to remit such tax collected commits embezzlement, as defined in sections 18-4-401 and 18-4-403, C.R.S.

(IV) Upon audit, the unit operator shall not be liable for any tax or any penalty interest levied against any amount of production taken in kind from the property for which the fractional interest owner taking production in kind provided inaccurate information regarding net taxable revenues to be used for tax reporting.

(4.5) (a) If the unit operator fails to remit the proportional share of tax levied on the fractional interest in the unit owned by the unit operator, the treasurer shall send a notice by registered mail to the first purchaser of the name of the unit operator owing such tax and the amount the first purchaser shall withhold from any of the unit operator's proceeds of the sale of any oil and gas from such lease. After receiving such notice, the first purchaser shall withhold payments to the unit operator of any of the proceeds of the sale of any oil and gas from such lease. The first purchaser shall remit such withheld payments to the treasurer until the amount of such tax and penalties are paid in full, after which the first purchaser may resume such payments to the unit operator for such oil and gas.

(b) The tax liability of the unit operator whose proportional share of tax levied on the fractional interest in the unit owned by the unit operator was withheld from payments by the first purchaser pursuant to paragraph (a) of this subsection (4.5) but was not remitted by the first purchaser to the treasurer shall be deemed satisfied to the extent of the amount withheld, and such unit operator shall not be subject to any collection and enforcement remedies and procedures provided by law for the collection of such delinquent tax for which an amount was withheld by a first purchaser from oil and gas sale proceeds pursuant to the provisions of this section.

(c) If the first purchaser fails to collect the tax or when the tax has been collected by the first purchaser pursuant to the provisions of this subsection (4.5) but the first purchaser fails to transfer the tax to the treasurer pursuant to paragraph (a) of this subsection (4.5), the first purchaser shall remain liable for the amount of tax owed. The treasurer may utilize lawful collection and enforcement remedies and procedures against any first purchaser to collect the amount of such taxes and penalties owed by such first purchaser.

(5) For the purposes of this section, "unit" means any single oil, gas, or other hydrocarbon well or field which has multiple ownership, or any combination of oil, gas, or other hydrocarbon wells, fields, and properties consolidated into a single operation, whether by a formal agreement or otherwise; "owner" means the holder of any interest or interests in such properties or units, including royalty interest; and "first purchaser" means either the first purchaser to buy oil or gas from a new producing well or the current purchaser of oil or gas from a producing well.

Source: L. 64: R&RE, p. 717, § 1. C.R.S. 1963: § 137-10-6. L. 69: p. 1121, § 3. L. 71: p. 1247, § 1. L. 79: p. 1418, § 3. L. 87: (3.5) and (4.5) added and (4) amended, p. 1419, § 1, effective May 20. L. 88: (3.5)(a), (3.5)(c), and (4)(b)(III) amended and (3.5)(b) R&RE, p. 1309, §§ 2, 1, effective April 14; (4)(b)(III) amended, p. 1437, § 38, effective June 11. L. 93: (1) and (3.5)(c) amended and (4)(b)(IV) added, pp. 242, 243, §§ 3, 4, effective March 31. L. 99: (1) amended, p. 629, § 41, effective August 4.

ANNOTATION

Law reviews. For article, "Delinquent Oil and Gas Ad Valorem Taxes: Protecting Property Interests", see 16 Colo. Law. 798 (1987).

The county's sale of fractional interests was improper where the unit operator collected the amount due for taxes from the fractional

interest owners, but illegally failed to remit the taxes. The language of this section unambiguously reveals the general assembly's intent to

hold unit operators liable in this situation. *Roehrs v. County of Morgan*, 991 P.2d 322 (Colo. App. 1999).

39-10-107. Apportionment of taxes, delinquent interest - payment. (1) (a) Notwithstanding any other provision of law, all taxes collected by the treasurer shall be apportioned, credited, and distributed to the state, the county, and the several towns, cities, school districts, and special districts within the county on the tenth day of each month for all taxes collected during the immediately preceding month; except that:

(I) If the amount of taxes collected for the month equals less than one hundred dollars for any town, city, school district, or special district, the treasurer may elect to distribute the amount on a quarterly basis to the town, city, school district, or special district; and

(II) If the amount of taxes collected for the month equals less than fifty dollars for any town, city, school district, or special district, the treasurer may elect to distribute the amount on an annual basis to the town, city, school district, or special district.

(b) Any prior years' taxes collected during any given year on oil and gas leaseholds and lands that had previously been omitted from the assessment roll due to underreporting of the selling price or the quantity of oil and gas sold therefrom shall be placed in escrow by the treasurer to be apportioned, credited, and distributed during January of the subsequent year.

(c) Prior to being apportioned, credited, and distributed, all taxes collected by the treasurer shall be reduced by an amount equal to the costs incurred by the treasurer and the assessor; except that such costs shall not include any contingency fee paid to any person for the audit review and collection of such prior years' taxes as such contingency fees are prohibited. Prior to being apportioned, credited, and distributed, all taxes shall be reduced by an amount equal to an entity's pro rata share of any tax refunds granted subsequent to distribution by the treasurer if the amount has not otherwise been returned by the entity; except that this requirement to reduce taxes shall not apply to a city and county. All delinquent interest shall be apportioned, credited, and distributed in the same manner.

(2) The treasurer shall keep one account for all property taxes collected for the state and, no later than the tenth day of each month, shall remit to the state treasurer the total amount of such taxes collected during the month immediately preceding, with a report thereof on forms prescribed and furnished by the state treasurer. No fee shall be charged to the state for collection of its taxes.

(3) Whenever any school district elects, pursuant to law, to have the moneys of such district paid over to the district treasurer, the treasurer of any county wherein such school district is located shall, no later than the tenth day of each month, pay over to the district treasurer all taxes collected for said school district during the month immediately preceding; except that, on and after January 1, 1992, the county treasurer shall make an additional payment to the district treasurer during the months of March, May, and June, which payment shall consist of all taxes collected through the twentieth day of the respective month if the county has a population of at least five thousand persons and which payment shall consist of all taxes collected through the eighteenth day of the respective month if the county has a population of less than five thousand persons. Such additional payment shall be made no later than the twenty-fourth day of said month.

(4) No later than the tenth day of each month, the treasurer shall prepare and submit to the board of county commissioners and to the proper officer of each town, city, school district, and special district within his county a statement showing the amount collected by him for each such entity during the month immediately preceding from each separate levy imposed for such entity. No later than the tenth day of January of each year, he shall prepare and submit a similar statement showing the amount collected during the entire calendar year immediately preceding from each separate levy imposed for such entity.

Source: L. 64: R&RE, p. 718, § 1. C.R.S. 1963: § 137-10-7. L. 79: (1) amended, p. 1421, § 4, effective January 1, 1980. L. 84: (1) amended, p. 1002, § 3, effective March 16. L. 90: (3) amended, p. 1718, § 5, effective June 7; (1) amended, p. 1704, § 40, effective June 9; (3) amended, p. 1087, § 53, effective July 1. L. 91: (1) amended, p. 1954, § 4, effective January 1, 1992. L. 91, 2nd Ex. Sess.: (3) amended, p. 57, § 2, effective

October 11. **L. 92:** (1) amended, p. 2227, § 11, effective April 9. **L. 2008:** (1) amended, p. 26, § 1, effective August 5; (1) amended, p. 1248, § 7, effective August 5.

Editor's note: Amendments to subsection (1) by House Bill 08-1059 and House Bill 08-1349 were harmonized.

39-10-108. Treasurer responsible for state tax levies. The treasurer is responsible to the state for the full amount of taxes levied on property in his county for state purposes, excepting such amounts as are certified to be unavailable because of clerical errors, because of erroneous or illegal valuation for assessment, or when determined to be uncollectible and cancelled pursuant to law.

Source: **L. 64:** R&RE, p. 719, § 1. **C.R.S. 1963:** § 137-10-8.

Editor's note: For the levy of taxes for state purposes, see § 11 of article X of the Colorado constitution. As of the adjournment of the Second Regular Session of the Fifty-ninth General Assembly on May 11, 1994, no such tax was being levied. For the prohibition against the levy of taxes on real property for state purposes, see section 20 (8)(a) of article X of the Colorado constitution.

39-10-109. Delinquent tax list - notice.

(1) Repealed.

(2) (a) As soon as practicable after June 15, the treasurer shall prepare a list of all persons delinquent in the payment of taxes on personal property and shall notify each such person by mail of the amount of delinquent personal property taxes and delinquent interest due and owing thereon to and including the last day of the month in which such notice is mailed. Such notice shall also state that, unless payment of the amount of such unpaid personal property taxes and delinquent interest thereon are paid by August 31, publication of such delinquency will be made during the month of September.

(b) This subsection (2) is effective January 1, 1992.

Source: **L. 64:** R&RE, p. 719, § 1. **C.R.S. 1963:** § 137-10-9. **L. 65:** p. 1108, § 1. **L. 90:** Entire section amended, p. 1718, § 6, effective June 7; entire section amended, p. 1087, § 54, effective July 1. **L. 92:** (2)(a) amended, p. 2227, § 12, effective April 9. **L. 94:** (2)(a) amended, p. 754, § 4, effective April 20.

Editor's note: Subsection (1)(b) provided for the repeal of subsection (1), effective January 1, 1992. (See L. 90, p. 1087.)

39-10-110. Publication of delinquent taxes. During the month of September, the treasurer shall publish for one time only in a newspaper published in his county a notice listing the names and addresses of all persons whose taxes on personal property are unpaid and delinquent, with the amount of such taxes and delinquent interest thereon to and including the last day of September, plus the fee prescribed in section 30-1-102, C.R.S. Such notice shall recite that, if the amount of such delinquent taxes, delinquent interest, and fee is not paid by the last day of September, the personal property upon which such taxes were levied shall be subject to distraint, seizure, and sale. If there is no newspaper published in the county, then the treasurer shall conspicuously post copies of such notice in the county courthouse, in the treasurer's office, and in at least one other public place in the county seat.

Source: **L. 64:** R&RE, p. 719, § 1. **C.R.S. 1963:** § 137-10-10. **L. 65:** p. 1108, § 2. **L. 71:** p. 327, § 5. **L. 92:** Entire section amended, p. 2228, § 13, effective April 9. **L. 93:** Entire section amended, p. 305, § 2, effective April 7.

39-10-110.5. Partial payment of delinquent personal property taxes. (1) Notwithstanding any other provision of law to the contrary, the treasurer may accept partial payments for delinquent personal property taxes so long as the owner of the personal

property has entered into a written payment plan with the treasurer. The payment plan shall specify the total amount due, including the amount of tax levied and any applicable interest, penalties, or fees; the amount of each payment; and payment due dates. The total amount due under a payment plan shall be paid in full no later than twenty-four months from the date the owner of the personal property enters into a written payment plan with the treasurer.

(2) The treasurer shall keep a copy of the payment plan until the owner of the personal property has paid the total amount identified in the payment plan. Once the owner of the personal property has paid the total amount due, the treasurer shall mark the plan "paid in full".

(3) The treasurer may terminate the payment plan if the owner of the personal property fails to abide by the terms and conditions of the plan.

Source: L. 98: Entire section added, p. 238, § 1, effective April 10.

39-10-111. Distraint, sale of personal property - redemption of mobile home.

(1) (a) At any time after the first day of October, the treasurer shall enforce collection of delinquent taxes on personal property by commencing a court action for collection or employing a collection agency as provided in section 39-10-112 or by distraining, seizing, and selling the property. Whenever a distraint warrant is issued, it shall be served by the sheriff or a commissioned deputy or, at the discretion of the sheriff, by a private server of process hired for the purpose. Any cost incurred as a result of hiring a private server of process shall be paid by the sheriff's office, and the cost shall not exceed the amount specified in section 30-1-104 (1) (a), C.R.S.

(b) When personal property upon which a distraint warrant has been issued or which is subject to such warrant by reason of delinquency has been removed to another county in the state, the treasurer of the county levying the tax may issue a certificate to the treasurer of the county to which the property has been removed, reciting the amount of taxes and delinquent interest unpaid and a description of the property to be distrained.

(c) The treasurer receiving such certificate shall thereupon proceed to distraint, seize, and sell such property in the same manner as if the property were originally taxed in his county and shall remit the net proceeds, after payment of any sheriff's fees and other costs of seizure and sale, to the treasurer who certified the delinquency to him.

(2) Whenever any personal property is distrained and seized, the treasurer or his deputy shall make a list of such property and deliver a copy thereof to the owner of such property or to his agent, and, as to any mobile home, to any lienholder of record, together with a statement of the amount demanded and notice of the time and place fixed for the sale of such property.

(3) No later than one hundred eighty days after the seizure of any personal property pursuant to this section, the treasurer shall publish a notice containing a description of the seized property, the reason for its being offered for sale, and the time and place fixed for the sale in a newspaper published in the county. If there is no such newspaper, the treasurer shall conspicuously post copies of such notice in the county courthouse and in at least two other public places in the county seat.

(4) The time fixed for the sale shall be not more than ten days from the date the notice is first published, but the sale may be adjourned from time to time if there are no bidders or if the treasurer deems such adjournment advisable for any reason, but in no event shall the sale be postponed for more than thirty days from the date the notice is first published.

(5) At the time and place fixed for the sale, the treasurer or deputy treasurer shall proceed to sell such property at public auction, offering it at a minimum price, which shall include the taxes, delinquent interest, and costs of making the seizure and advertising the sale. If the amount bid at the sale is not equal to the fixed minimum price, the treasurer or deputy treasurer may declare the property purchased by the county at the fixed minimum price, and it shall thereafter be sold within one hundred fifty days in such manner as may be determined by the board of county commissioners.

(6) (a) In any county wherein the treasurer has insufficient personnel to conduct said sale, upon demand of the treasurer, the sheriff shall conduct such sale, collect the proceeds

thereof, and pay the same over to the treasurer. In such event, the sheriff shall receive such fees as are provided in section 30-1-104, C.R.S.

(b) The treasurer may enter into a contract to employ the services of any professional auctioneer or auction company to conduct such sale, collect the proceeds thereof, and pay the same over to the treasurer, when the treasurer deems such services to be appropriate and to be in the best interests of the public. Such contract shall be awarded by competitive bid, but the treasurer may reject any or all bids or parts of bids. The auctioneer or auction company conducting such sale shall provide the treasurer with an itemized list of all property sold, the amount paid for such property sold, and each purchaser's name and address. The fees of the auctioneer or auction company shall be paid by the treasurer from the proceeds of the sale.

(7) In all cases of sale, the treasurer shall issue a certificate of sale to each purchaser, and such certificate shall be prima facie evidence of the right of the treasurer to make such sale and conclusive evidence of the regularity of the proceedings in conducting and making such sale. Except as provided in subsection (10) of this section with respect to mobile homes, the treasurer's certificate shall transfer to the purchaser all right, title, and interest of the owner in and to the property sold.

(8) Any surplus of the sale proceeds remaining over and above the taxes, delinquent interest, and costs of making the seizure and advertising the sale shall be paid over to the owner and a written account of the sale furnished him.

(9) If, prior to the time fixed for the sale, the amount demanded is paid to the treasurer, the property distrained upon and seized shall be restored to the owner thereof.

(10) A mobile home that is located on leased land or other land not owned by the owner of the mobile home, including, but not limited to, land that was previously owned by the owner of the mobile home and the ownership of which was subsequently acquired by foreclosure, and that is sold under the provisions of this section may be redeemed by the owner thereof within one year after the date of the sale upon payment to the treasurer of the proceeds of the sale, interest on such amount at the rate that is determined pursuant to section 39-12-103 (3), and all taxes due and payable on the mobile home subsequent to the tax sale, except as provided in subsection (12) of this section. A mobile home that is located on land owned by the owner of the mobile home and that is sold under the provisions of this section may be redeemed by the owner thereof within three years after the date of the sale upon payment to the treasurer of the proceeds of the sale, interest on such amount at the rate that is determined pursuant to section 39-12-103 (3), and all taxes due and payable on the mobile home subsequent to the tax sale, except as provided in subsection (12) of this section. The treasurer shall return such moneys to the purchaser or lawful holder of the certificate of sale. Except as provided in subsection (11) of this section on or before thirty days prior to the close of the redemption period, the treasurer shall notify the owner of the mobile home and any lienholder of record in the department of revenue and secretary of state, by personal delivery or by certified or registered mail to his or her last-known address, that a treasurer's certificate of ownership for the mobile home may issue to the purchaser or lawful holder of the certificate of sale at the close of the redemption period unless such payment is made. Upon redemption, the treasurer shall notify the department of revenue that redemption has been made and thereafter release the tax sale lien filed against the mobile home. If the owner has not exercised his or her right of redemption and after the close of the redemption period, the purchaser or lawful holder of the certificate of sale may apply to the treasurer for a treasurer's certificate of ownership for the mobile home. Upon receipt of such application, the treasurer shall issue a treasurer's certificate of ownership to such purchaser or holder, and such certificate of ownership shall transfer to him or her all right, title, and interest in and to the mobile home. Such certificate of ownership shall, upon application, entitle the purchaser or holder thereof to a certificate of title to be issued and filed pursuant to part 1 of article 6 of title 42, C.R.S. Any surplus of the sale proceeds over and above the taxes, delinquent interest, and costs of making the seizure and advertising the sale of a mobile home shall be credited to the county general fund, and a written account of the sale shall be furnished to the owner.

(11) If taxes become delinquent upon the personal property of any public utility, as defined in article 4 of this title, the treasurer of the county in which the taxes are delinquent

shall commence a court action for collection or employ a collection agency as provided in section 39-10-112 or distrain and sell any of the personal property of the utility wherever found in the manner that other personal property is to be distrained and sold for the nonpayment of taxes; except that, for taxes imposed pursuant to article 1 of title 32, C.R.S., that equal or exceed one hundred mills in any one year, only the personal property that is the subject of the taxes and located within the special district at the time of assessment of the taxes shall be subject to levy or distraint for the payment of the delinquent taxes.

(12) Where a mobile home has been declared to be purchased by the county at the tax sale and where the actual value of the mobile home as shown on the assessment roll has been determined by the assessor to be less than one thousand dollars, the redemption period for such mobile home shall be sixty days. The assessor's determination of value shall be deemed accurate absent a showing of negligence on the part of the assessor. On or before ten days prior to the close of the redemption period, the treasurer shall notify the owner of the mobile home and any lienholder of record in the department of revenue and secretary of state, by personal delivery or by certified or registered mail to the last-known address, that the mobile home shall be declared condemned and shall be disposed of at the end of the redemption period. The treasurer shall have the authority to so declare a mobile home condemned after the redemption period has terminated. After the mobile home is declared condemned, it may be disposed of as the treasurer deems appropriate.

(13) When a county seizes property that is used in a business, the county shall not continue to operate the business.

Source: L. 64: R&RE, p. 719, § 1. C.R.S. 1963: § 137-10-11. L. 67: p. 212, § 2. L. 70: p. 389, § 2. L. 77: (7) amended and (10) added, p. 1742, § 4, effective January 1, 1980. L. 78: (2) and (10) amended, pp. 478, 480, §§ 3, 4, effective March 10. L. 79: (11) added, p. 1421, § 5, effective January 1, 1980. L. 80: (10) amended, p. 499, § 4, effective July 1. L. 82: (10) amended, p. 550, § 15, effective July 1. L. 90: (10) amended, p. 1698, § 24, effective June 9. L. 91: (5) and (6) amended, p. 1972, § 3, effective March 27; (10) amended and (12) added, p. 1697, § 8, effective July 1. L. 92: (1)(b), (5), (8), and (10) amended, p. 2228, § 14, effective April 9. L. 93: (1)(a) amended, p. 305, § 3, effective April 7. L. 94: (4) amended, p. 754, § 5, effective April 20. L. 95: (11) amended, p. 128, § 2, effective April 7. L. 96: (1)(a) and (11) amended, p. 13, § 1, effective February 22. L. 2000: (10) amended, p. 1637, § 15, effective June 1. L. 2004: (3) and (5) amended and (13) added, p. 158, § 1, effective August 4.

Cross references: For recordation of tax sales of mobile homes by the county treasurer and the fee therefor as part of redemption cost, see § 39-11-114.

ANNOTATION

Law reviews. For article, "Delinquent Oil and Gas Ad Valorem Taxes: Protecting Property Interests", see 16 Colo. Law. 798 (1987).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Service of distraint warrant no delegation of power to collect taxes. The service of a distraint warrant does not constitute a delegation of power to collect by the treasurer to the sheriff. *Goldsmith v. McAnally*, 92 Colo. 384, 20 P.2d 1009 (1933).

Personal property tax sale extinguishes prior liens. A personal property tax sale under the provisions of subsection (7) extinguishes all prior liens and encumbrances. *Moorehead v. John Deere Indus. Equip. Co.*, 194 Colo. 398, 572 P.2d 1207 (1977).

Section 39-10-113 and subsection (11) of this section do not authorize the distraint, seizure, and sale of the taxable personal property of a lessor to satisfy the personal property tax of the lessee. *In re W. Pac. Airlines*, 273 F.3d 1288 (10th Cir. 2001).

County treasurer not indispensable party in proceeding challenging lien priority. In a tax sale, the county treasurer who issued the certificate of sale to purchaser of tax sale was not an indispensable party under C.R.C.P. 19(a) to a proceeding challenging priority of lien of a secured party in the property sold at the tax sale, since complete relief could be and was afforded without the treasurer's presence as a party. *John Deere Indus. Equip. Co. v. Moorehead*, 38 Colo. App. 220, 556 P.2d 91 (1976), rev'd on other grounds, 194 Colo. 398, 572 P.2d 1207 (1977).

39-10-112. Action to collect unpaid taxes. (1) (a) In order to collect delinquent personal property taxes and any delinquent interest thereon, the treasurer may, at the treasurer's option, sue the owner of the personal property in any court in the treasurer's county having jurisdiction, enter into a contract to employ the services of any collection agency that is duly licensed pursuant to section 12-14-119 or 12-14-120, C.R.S., or distrain, seize, and sell the personal property as provided in section 39-10-111.

(b) Any contract to employ the services of any duly licensed collection agency shall be awarded by competitive bid, but the treasurer may reject any or all bids or parts of bids. The fees of the collection agency shall be paid by the treasurer from the moneys recovered by the collection agency, but in no event shall the fees paid to the collection agency exceed one-third of the amount recovered.

(2) (Deleted by amendment, L. 96, p. 14, § 2, effective February 22, 1996.)

(3) Upon the trial of any court action brought pursuant to subsection (1) of this section, a certificate from the treasurer, reciting the amount of the taxes and any delinquent interest thereon and that the same has not been paid, shall be prima facie evidence that the amount claimed is due and unpaid, and judgment shall be given for the amount thereof, together with all costs, and execution shall issue as in other cases. Whenever the treasurer sues in court, the county attorney shall perform all legal work involved if requested by the treasurer, and the costs of the action shall be paid by the county.

(4) Nothing in this section shall be construed as relieving the treasurer of the duties of the office of county treasurer.

Source: L. 64: R&RE, p. 721, § 1. C.R.S. 1963: § 137-10-12. L. 91: Entire section amended, p. 1973, § 4, effective March 27. L. 92: (1)(a)(I)(A) and (2) amended, p. 2229, § 15, effective April 9. L. 94: Entire section amended, p. 755, § 6, effective April 20. L. 96: Entire section amended, p. 14, § 2, effective February 22.

39-10-113. Removal or transfer of personal property - collection of taxes.

(1) (a) If at any time after the lien of general taxes has attached the treasurer believes for any reason that any taxable personal property may be removed from the state of Colorado or may be dissipated or distributed, so that taxes to be levied for the current year may not be collectible, the treasurer may at once proceed to collect the taxes and, if the treasurer deems it necessary, may distrain, seize, and sell the personal property to enforce collection. Upon the treasurer's request, the assessor shall certify to the treasurer the valuation for assessment of the personal property for the current year. If the levy for the current year has not then been fixed and made, the levy for the previous year shall be used to determine the amount of taxes due.

(b) Repealed.

(2) Whenever the assessor notifies the treasurer of the valuation of any taxable personal property, as provided in section 39-5-110 (2), which property the assessor believes might be removed from the county, the treasurer shall proceed to collect the taxes on the property by commencing a court action for collection or employing a collection agency as provided in section 39-10-112 or by distraining, seizing, and selling the personal property as provided in section 39-10-111 if either the treasurer or the assessor deems it necessary. If the levy for the current year has not then been fixed and made, the levy for the previous year shall be used to determine the amount of taxes due.

(3) At such time as the levy for the current year has been fixed and made, the amount of any taxes collected on personal property pursuant to the provisions of subsection (1) of this section in excess of the amount correctly due and payable shall be refunded to the owner of such property forthwith; but in all cases where the amount of taxes so collected is less than the amount correctly due and payable, the amount uncollected shall be considered an erroneous assessment and shall be reported with other erroneous assessments in the manner prescribed by law.

Source: L. 64: R&RE, p. 721, § 1. C.R.S. 1963: § 137-10-13. L. 67: p. 951, § 23. L. 70: p. 390, § 3. L. 83: (2) amended, p. 1484, § 8, effective April 22. L. 91: (1)(b) repealed, p. 270, § 9, effective July 1. L. 96: (1) and (2) amended, p. 14, § 3, effective February 22.

ANNOTATION

Section 39-10-111 (11) and this section do not authorize the distraint, seizure, and sale of the taxable personal property of a lessor to satisfy the personal property tax of the lessee. In re W. Pac. Airlines, 273 F.3d 1288 (10th Cir. 2001).

“Any taxable personal property” means any taxable personal property of the taxpayer. In re W. Pac. Airlines, 273 F.3d 1288 (10th Cir. 2001).

39-10-113.5. Improvements valued and taxed separately - collection of taxes.

(1) Notwithstanding any law to the contrary and except as otherwise provided in this section, if taxes become delinquent upon improvements that have been valued and taxed separately from land, the treasurer of the county in which such taxes are delinquent may proceed to collect such taxes pursuant to the provisions of sections 39-10-111, 39-10-112, and 39-10-113 as if such improvements were personal property. The provisions of this section shall not apply to mobile homes, improvements other than buildings on land that is used solely and exclusively for agricultural purposes, and water rights, together with any dam, ditch, pipeline, canal, flume, reservoir, bypass, conduit, well, pump, or other associated structure or device, as defined in article 92 of title 37, C.R.S., being used to produce water or held to produce or exchange water to support uses of any item of real property specified in section 39-1-102 (14), including water rights used for agricultural purposes.

(2) (a) The provisions of this section shall not apply to any property classified by the assessor for property tax purposes as commercial property unless the treasurer:

(I) Finds that the improvements may be moved, dissipated, or distributed;

(II) Determines that the taxes may be uncollectible;

(III) Sets forth the reasons for such finding and determination in writing and either serves such writing upon the owner of such improvements or, if the owner cannot be located within the state, posts such writing conspicuously upon such improvements.

(b) Upon compliance with the requirements set forth in paragraph (a) of this subsection (2), the treasurer may proceed to collect such taxes pursuant to the provisions of subsection (1) of this section.

Source: L. 92: Entire section added, p. 2235, § 1, effective April 10. L. 96: (1) amended, p. 469, § 2, effective April 23.

39-10-114. Abatement - cancellation of taxes. (1) (a) (I) (A) Except as otherwise provided in sub-subparagraphs (D) and (E) of this subparagraph (I), if taxes have been levied erroneously or illegally, whether due to erroneous valuation for assessment, irregularity in levying, clerical error, or overvaluation, the treasurer shall report the amount thereof to the board of county commissioners; which shall proceed to abate such taxes in the manner provided by law. The assessor shall make such report if the assessor discovers that taxes have been levied erroneously or illegally. If such taxes have been collected by the treasurer, the board of county commissioners shall authorize refund of the same in the manner provided by law. Except as provided in sub-subparagraphs (E) and (F) of this subparagraph (I), in no case shall an abatement or refund of taxes be made unless a petition for abatement or refund is filed within two years after January 1 of the year following the year in which the taxes were levied. For purposes of this sub-subparagraph (A), “clerical error” shall include, but shall not be limited to, any clerical error made by a taxpayer in completing personal property schedules pursuant to the provisions of article 5 of this title. Notwithstanding any other law to the contrary, for purposes of this sub-subparagraph (A), “erroneous valuation” shall include, but shall not be limited to: Any reclassification of property from agricultural land to any other classification of property for the property tax

year commencing January 1, 1996, if the property in question qualifies for classification as agricultural land as determined pursuant to section 39-1-102 (1.6), as amended by Senate Bill 97-039, enacted at the first regular session of the sixty-first general assembly; and any denial of exemption from taxation for property claimed as agricultural and livestock products for the property tax year commencing January 1, 1996, if the property in question qualifies as agricultural and livestock products as determined pursuant to section 39-1-102 (1.1), as amended by Senate Bill 97-039, enacted at the first regular session of the sixty-first general assembly.

(B) The assessor shall certify the proportional amount of the total amount of abatements and refunds granted pursuant to the provisions of this section to the appropriate taxing entities at the same time that the certification of valuation for assessment is made pursuant to the provisions of section 39-5-128. Any taxing entity may adjust the amount of its tax levy authorized pursuant to the provisions of section 29-1-301, C.R.S., by an additional amount which does not exceed the proportional share of the total amount of abatements and refunds made pursuant to the provisions of this section. After calculating the amount of property tax revenues necessary to satisfy the requirements of the "Public School Finance Act of 1994", article 54 of title 22, C.R.S., any school district shall add an amount equal to the proportional share of the total amount of abatements and refunds granted pursuant to the provisions of this section prior to the setting of the mill levy for such school district. Any additional amount added pursuant to the provisions of this subsection (1) shall not be included in the total amount of revenue levied in said year for the purposes of computing the limit for the succeeding year pursuant to the provisions of section 29-1-301, C.R.S. Where a final determination is made granting an abatement or refund pursuant to the provisions of this section, the abatement or refund granted shall be payable at such time as determined by the board of county commissioners after consultation with affected taxing entities but no later than upon the payment of property taxes for the property tax year in which said final determination was made. For the purposes of this sub-subparagraph (B), a taxing entity's proportional share of the total amount of abatements and refunds granted shall be based upon the amount of tax levied by a taxing entity on such real property in proportion to the total amount of tax levied on such real property by such taxing entities.

(B.5) Notwithstanding the provisions of sub-subparagraph (B) of this subparagraph (I), no school district shall be required to levy additional amounts for abatements and refunds which are the result of any protests or appeals of valuation upon which final orders or judgments rendered by a court of competent jurisdiction have been issued and which reduce the valuation for assessment of the district by more than twenty percent. Any school district which is currently levying for abatements, refunds, or both and which would not be required to levy such amounts if this sub-subparagraph (B.5) had been in effect for the tax year in which the court orders or judgments were issued shall have no further obligation to levy for uncollected amounts.

(C) The change or adjustment of any ratio of valuation for assessment for residential real property pursuant to the provisions of section 39-1-104.2 shall not constitute grounds for abatement of taxes as provided in sub-subparagraph (A) of this subparagraph (I).

(D) No abatement or refund of taxes shall be made based upon the ground of overvaluation of property if an objection or protest to such valuation has been made and a notice of determination has been mailed to the taxpayer pursuant to section 39-5-122; except that this prohibition shall not apply to personal property when a notice of determination has been mailed to the taxpayer, an objection or protest is withdrawn or not pursued, and the county assessor has undertaken an audit of such personal property that shows that a reduction in value is warranted.

(E) Notwithstanding the periods of limitation for filing a petition for and determining the amount of an abatement or refund of taxes provided in sub-subparagraphs (A) and (D) of this subparagraph (I), when an audit of prior years' taxes for the period described in section 39-10-101 (2) (b) discloses that taxes are due and owing on personal property or on mines and on oil and gas leaseholds, such taxes shall be subtracted from any overpayment of such taxes determined to be due pursuant to this subparagraph (I) for any years during such period and prior to computing delinquent interest.

(F) Notwithstanding the periods of limitation for filing a petition for and determining the amount of an abatement or refund of taxes provided in sub-subparagraph (A) or (D) of this subparagraph (I), an abatement or refund of taxes may be made to any common interest community for property taxes levied for property tax years commencing on or after January 1, 1985, but prior to January 1, 1996, on property not valued in accordance with section 39-1-103 (10), if a petition for abatement or refund is filed on or before June 1, 1997.

(II) Repealed.

(b) Any taxes illegally or erroneously levied and collected, and delinquent interest thereon, shall be refunded pursuant to this section, together with refund interest at the same rate as that provided for delinquent interest set forth in section 39-10-104.5; except that refund interest shall not be paid if the taxes were erroneously levied and collected as a result of an error made by the taxpayer in completing personal property schedules pursuant to the provisions of article 5 of this title. Said refund interest shall accrue only from the date payment of taxes and delinquent interest thereon was received by the treasurer from the taxpayer; except that refund interest shall accrue from the date a complete abatement petition is filed if the taxes were erroneously levied and collected as a result of an error or omission made by the taxpayer in completing the statements required pursuant to the provisions of article 7 of this title and the county pays the abatement or refund within the time frame set forth in sub-subparagraph (B) of subparagraph (I) of paragraph (a) of this subsection (1). Refund interest on abatements or refunds made pursuant to sub-subparagraph (F) of subparagraph (I) of paragraph (a) of this subsection (1) shall only accrue on taxes paid for the two latest years of illegal or erroneous assessment.

(c) Notwithstanding any other provision of this section, if a county, board of assessment appeals, court of competent jurisdiction, or the property tax administrator determines that a property is exempt from taxation under sections 39-3-106 to 39-3-113 or section 39-3-116, and if the county, board, court, or administrator finds competent evidence that said property became or remained subject to taxation for a period as a result of an error or omission made by the taxpayer, then the county, the board of assessment appeals, court of competent jurisdiction, or the property tax administrator may award refund interest or any other type of interest for not greater than two property tax years. Any interest awarded pursuant to this paragraph (c) shall be at the same rate as provided in section 39-10-104.5.

(2) (a) Any taxes levied on personal property, including but not limited to mobile homes, which are determined to be uncollectible after a period of one year after the date of their becoming delinquent may be cancelled by the board of county commissioners.

(b) When any real property has been stricken off to a county by virtue of a tax sale and there has been no transfer by the county of a certificate of purchase thereon, the taxes on such property may be determined to be uncollectible after a period of six years from the date of becoming delinquent, and they may be cancelled by the board of county commissioners. Such cancellation shall not affect the rights of the county under article 11 of this title to subsequently transfer any tax sale certificate nor its right to receive a tax deed and to exercise its rights thereunder with respect to such property.

(3) The treasurer shall keep a complete record of all taxes abated, refunded, or determined to be uncollectible and cancelled by the board of county commissioners as provided in subsection (2) of this section. The treasurer shall file an annual report with the administrator by August 25 of each year that shall include all taxes abated, refunded, or determined to be uncollectible and cancelled. Such report shall include the name of each owner of taxable property granted such abatement, refund, or cancellation of property taxes, the amount of property taxes abated, refunded, or cancelled, and the date such abatement, refund, or cancellation was granted. The treasurer shall also file an annual report with the department of revenue by August 10 of each year that shall include all taxes on personal property abated or refunded. Such report shall include the name of each owner of taxable personal property granted such abatement or refund of personal property taxes, the schedule number that was the basis for the imposition of the taxes abated or refunded, if applicable, the amount of personal property taxes abated or refunded, and the date such abatement or refund was granted.

effective January 1, 1982. **L. 88:** (1)(a) and (3) amended, p. 1290, § 24, effective May 23. **L. 89:** (1)(a)(I)(A) amended, p. 1459, § 19, effective June 7. **L. 90:** (1)(b) amended, p. 1719, § 8, effective June 7; (1)(a)(I)(B) amended and (1)(a)(I)(D) added, p. 1702, § 36, effective June 9; (1)(b) amended, p. 1088, § 56, effective July 1. **L. 91:** (1)(a)(I)(A), (1)(a)(I)(B), and (1)(a)(I)(D) amended, p. 1963, § 3, effective June 5. **L. 92:** (1)(b) and (2)(a) amended, pp. 2230, 2236, §§ 16, 2, effective April 9; (1)(a)(I)(A) and (1)(a)(I)(D) amended and (1)(a)(I)(E) added, p. 2239, § 2, effective April 10; (1)(b) amended, p. 2186, § 68, effective June 2. **L. 93:** (1)(b) amended, p. 306, § 7, effective April 7; (1)(a)(I)(B.5) added, p. 998, § 1, effective June 2. **L. 94:** (1)(a)(I)(B) amended, p. 825, § 57, effective April 27. **L. 96:** (1)(a)(I)(A) and (3) amended, p. 115, § 3, effective March 25; (1)(a)(I)(A) and (1)(b) amended and (1)(a)(I)(F) added, p. 573, § 1, effective April 25; (1)(a)(I)(D) and (1)(a)(I)(E) amended, p. 650, §§ 4, 5, effective May 1. **L. 97:** (1)(a)(I)(A) amended, p. 511, § 2, effective April 24. **L. 2000:** (3) amended, p. 751, § 4, effective May 23. **L. 2002:** (1)(b) amended, p. 843, § 6, effective August 7. **L. 2003:** (1)(b) amended, p. 919, § 1, effective August 6. **L. 2009:** (1)(c) added, (HB 09-1265), ch. 47, p. 170, § 1, effective August 5.

Editor's note: (1) Subsection (1)(a)(II)(B) provided for the repeal of subsection (1)(a)(II), effective January 1, 1989. (See L. 88, p. 1290.)

(2) Amendments to subsection (1)(a)(I)(A) by House Bill 96-1131 and House Bill 96-1290 were harmonized.

Cross references: For the authorization for school districts to apply to the state contingency reserve for assistance relating to abatements and refunds of taxes, see § 22-54-117; for the administrative procedure for abatement of taxes, see § 39-1-113; for approval of tax abatements and rebates by the property tax administration, see § 39-2-116.

ANNOTATION

- I. General Consideration.
- II. Obligations and Rights.
- III. Equity Jurisdiction.

I. GENERAL CONSIDERATION.

Law reviews. For article, "A Calendar of Tax Procedure in Colorado", see 6 Dicta 17 (July 1929). For article, "The Tax Refund Statute Speaks", see 10 Dicta 196 (1933). For article, "The Reluctant Taxpayer: His Remedy by Injunction", see 15 Dicta 137 (1938). For article, "Some Aspects of Colorado Taxpayers' Remedies", see 23 Rocky Mt. L. Rev. 145 (1950). For article, "Property Tax Assessments in Colorado", see 12 Colo. Law. 563 (1983). For article, "Legislative Update on Property Taxation and New Arbitration Procedures", see 17 Colo. Law. 1751 (1988).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Subsection (1)(a)(I)(B) is consistent with art. X, § 20 of the state constitution. Bolt v. Arapahoe County Sch. Dist. No. 6, 898 P.2d 525 (Colo. 1995).

Purpose of section. Recognizing the law and appreciating the necessity of prompt payment of the public revenue as an essential prerequisite to efficient government, the general assembly enacted this section. Bd. of Comm'rs v. Atchison, T. & S. F. Ry., 52 Colo. 609, 125 P. 528 (1912).

Action under this section not forum to attack voidable judgment. A judgment ordering a tax levy for payment of another judgment alleged to have been procured by fraud and collusion is binding upon the taxpayers, unless and until the alleged voidable judgment is set aside in a direct proceeding brought for that purpose. An action under this section to recover taxes paid is not such direct proceeding. Atchison, T. & S. F. Ry. v. Bd. of Comm'rs, 95 Colo. 435, 37 P.2d 761 (1934).

Since no specific method for judicial review of the board's ruling under this section is provided, the "State Administrative Procedure Act", §§ 24-4-101 et seq., applies and judicial review is proper in the city and county of Denver. Gunnison County v. Bd. of Assess. Appeals, 693 P.2d 400 (Colo. App. 1984).

Protest and adjustment procedures are separate and independent from abatement and refund procedures. An appeal for a trial de novo under § 39-8-108 is not an "alternate petition" for abatement or refund under subsection (1)(a)(I) of this section. Wyler/Pebble Creek Ranch v. Colo. Bd. of Assess. Appeals, 883 P.2d 597 (Colo. App. 1994).

Taxpayer's petition for abatement and refund is not precluded by subsection (1)(a)(I)(D) because it is based upon an erroneous valuation for assessment, which is a legal issue, rather than overvaluation, which is a factual issue. Taxpayer's abatement petition

asserts that, as a matter of law, absent unusual conditions that are not at issue, the assessments for 1999 and 2000 must be the same, and the argument requires a legal, rather than a factual, determination. *Boulder Country Club v. Boulder County Bd. of Comm'rs*, 97 P.3d 119 (Colo. App. 2003).

This section does not contain a provision for abatement or refund of property taxes paid by a taxpayer through self-reporting of personal property it knows does not exist. *Boulder County Bd. of Comm'rs v. HealthSouth Corp.*, 246 P.3d 948 (Colo. 2011).

Refund interest is interest paid to the taxpayer by the county to compensate the taxpayer for having paid erroneously levied taxes; therefore refund interest begins to accrue until the taxpayer pays the tax, and not on the date of a lien sale. *Dove Valley Bus. Park Assocs. v. Bd. of County Comm'rs of Arapahoe County*, 923 P.2d 242 (Colo. App. 1995), *aff'd* on other grounds, 945 P.2d 395 (Colo. 1997).

Applied in *Lowden v. Bd. of Comm'rs*, 101 Colo. 52, 69 P.2d 779 (1937); *Laredo Hous. Apts., Ltd. v. Bd. of County Comm'rs*, 628 P.2d 135 (Colo. App. 1980); *Laredo Hous. Apts., Ltd. v. Bd. of Assmt. Appeals*, 675 P.2d 23 (Colo. App. 1983); *Lucchesi v. State*, 807 P.2d 1185 (Colo. App. 1990).

II. OBLIGATIONS AND RIGHTS.

This is substantive law, giving a new right; this section has nothing to do directly with the law of procedure. *Union P. R. v. Bd. of Comm'rs*, 222 F. 651 (8th Cir. 1915), *rev'd* on other grounds, 247 U.S. 282, 38 S. Ct. 510, 62 L. Ed. 1110 (1918).

This section imposes upon county commissioners duty of refunding taxes which have been paid and are found to be illegal. *Singer Sewing Mach. Co. v. Benedict*, 229 U.S. 481, 33 S. Ct. 942, 57 L. Ed. 1288 (1913); *Union P. R. v. Bd. of County Comm'rs*, 247 U.S. 282, 38 S. Ct. 510, 62 L. Ed. 1110 (1918).

Correlative right upon taxpayer to maintain action for refund. This section confers upon the taxpayer a correlative right to enforce the county commissioners' duty of refunding taxes by an action at law. *Singer Sewing Mach. Co. v. Benedict*, 229 U.S. 481, 33 S. Ct. 942, 57 L. Ed. 1288 (1913); *Union P. R. v. Bd. of County Comm'rs*, 247 U.S. 282, 38 S. Ct. 510, 62 L. Ed. 1110 (1918).

Taxpayer has right to maintain suit at law in state court for recovery of a tax not legally laid, or growing out of an illegal assessment, or the validity of which he has right to question. *Baker v. Atchison, T. & S. F. Ry.*, 106 F.2d 525 (10th Cir.), *cert. denied*, 308 U.S. 620, 60 S. Ct. 296, 84 L. Ed. 518 (1939); *Northcutt v. Burton*, 127 Colo. 145, 254 P.2d 1013 (1953), *overruled in*

Bd. of Assess. Appeals v. Benbrook, 735 P.2d 860 (Colo. 1987).

Property owner's remedy for levy of excessive tax. In Colorado, the remedy of a property owner for the levy of an excessive tax is to pay under protest and to bring an action against the county to recover the same. *Holly Sugar Corp. v. Bd. of Comm'rs*, 10 F.2d 506 (D. Colo. 1926).

Tax must be illegal and void for recovery in action at law. An error as to valuation of property for taxation, even if excessive, does not render the tax illegal and void, which is necessary in order to recover in an action at law. *S. Broadway Nat'l Bank v. City & County of Denver*, 51 F.2d 703 (10th Cir. 1931).

Excessive application of tax. An equity in school lands is a property right notwithstanding it may have no cash value. If the land is of no value, an assessment thereon for tax purposes would be merely excessive and not illegal. *Bordner v. Bd. of Comm'rs*, 92 Colo. 81, 18 P.2d 323 (1932).

Taxpayer's burden to show illegal assessment. Where one attempts to maintain a proceeding for a tax refund pursuant to this section, he has the burden of showing that the tax was illegally laid, is erroneous in its entirety, and is incapable of adjustment. *Weidenhaft v. Bd. of County Comm'rs*, 131 Colo. 432, 283 P.2d 164 (1955).

When section provides taxpayer relief from overassessment. The provisions of this section provide taxpayer relief from the overassessment of his property in situations where his knowledge of the excessive charge is acquired subsequent to the usual statutory deadlines for protests. *Modular Cmty., Inc. v. McKnight*, 191 Colo. 101, 550 P.2d 866 (1976).

The term "erroneous valuation for assessment" in this section and "excessive valuation" under the protest adjustment provisions of § 39-5-122 refer to the same process of assessment, and the remedies available to the taxpayer under this section apply to refunds ordered pursuant to § 39-8-109. *Bd. of Assess. Appeals v. Benbrook*, 735 P.2d 860 (Colo. 1987).

This section and § 39-1-113 provide a remedy for the abatement or refund of taxes that cannot be challenged under § 39-5-122. *Valley Country Club v. Bd. of Assess. Appeals*, 778 P.2d 285 (Colo. App. 1989), *rev'd* on other grounds, 792 P.2d 299 (Colo. 1990).

Section does not provide rights for tax lien purchasers. *Hughey v. Jefferson County Bd. of Comm'rs*, 921 P.2d 76 (Colo. App. 1996).

The abatement procedure may be used to provide taxpayer relief from the overassessment of his property in situations where his knowledge of excessive charges is acquired subsequent to the usual statutory deadlines for protest. *Valley Country Club v. Bd. of Assess. Appeals*, 778 P.2d 285 (Colo. App. 1989), *rev'd* on other grounds, 792 P.2d 299 (Colo. 1990).

Subject to specified exception, relief under subsection (1)(a)(I)(A) is not available for taxes levied prior to January 1, 1988. *Capital Assoc. Intern. v. Arapahoe Com'rs.*, 802 P.2d 1180 (Colo. App. 1990).

Prior to suit, taxpayer must exhaust administrative remedies. The remedies contained in this section and § 39-1-113 are complete and adequate; thus, prior to commencing a suit on illegal taxation issues, taxpayers are required to exhaust the administrative remedies detailed in these sections. *Davison v. Bd. of County Comm'rs*, 41 Colo. App. 344, 585 P.2d 315 (1978); *S. Cafeteria, Inc. v. Propty. Tax Adm'r*, 677 P.2d 362 (Colo. App. 1983).

Administrative remedies available under this article cannot be dispensed with. *First Nat'l Bank v. Bd. of County Comm'rs*, 264 U.S. 450, 44 S. Ct. 385, 68 L. Ed. 784 (1924).

Invocation of administrative remedies must be alleged. A complaint is fatally defective where it does not contain the indispensable allegation that administrative remedies have been invoked. *Bordner v. Bd. of Comm'rs*, 92 Colo. 81, 18 P.2d 323 (1932).

County is liable to one who pays tax imposed without authority of law. An unsatisfied judgment recovered by the taxpayer against the collector is no bar to his action against the county, even though the collector made no return to the county and converted the money to his own use. *Spaulding Mfg. Co. v. Bd. of Comm'rs*, 63 Colo. 438, 168 P. 34 (1917).

Illegal or erroneous tax. Where one owner of a converted condominium, after pursuing administrative remedies under § 39-5-122, obtained a declaration from district court that the imposition of an increased tax on his converted condominium was illegal, petitioners, as owners of identical condominiums, were entitled to seek relief under the abatement and refund provisions of § 39-1-113 and this section because the tax had been declared illegal. *Bd. of Assess. Appeals v. Benbrook*, 735 P.2d 860 (Colo. 1987); *Am. Airlines v. Bd. of Equaliz.*, 749 P.2d 986 (Colo. App. 1987), rev'd on other grounds, 773 P.2d 1033 (Colo. 1989), cert. denied, 493 U.S. 851, 110 S. Ct. 151, 107 L. Ed.2d 109 (1989).

There is no need to characterize the tax paid as wholly illegal before the taxpayer may obtain abatement and refund. *Bd. of Assess. Appeals v. Benbrook*, 735 P.2d 860 (Colo. 1987).

The administrator's determination that 1989 property tax was excessive does not render the tax illegal or otherwise erroneous and did not thereby provide an avenue for taxpayer to obtain an abatement of 1990 taxes because there was no evidence of changed or unusual conditions between 1989 and 1990. *Yale Invs., Inc. v. Prop. Tax Adm'r*, 897 P.2d 890 (Colo. App. 1995).

Where assessor failed to give timely notice of property valuation, proper remedy is not to

invalidate tax but to allow taxpayer to seek abatement of the tax increase pursuant to this section. *Bea Kay Real Estate Corp. v. Aragon*, 782 P.2d 837 (Colo. App. 1989).

While subsection (1)(a)(I)(D) bars a petition for abatement only in those situations in which the determination of the prior protest "has been mailed to the taxpayer", there was sufficient evidence to show the determination was mailed to an agent of the taxpayer and as such was authorized to receive the notice on behalf of the taxpayer. *Yale Invs., Inc. v. Prop. Tax Adm'r*, 897 P.2d 890 (Colo. App. 1995).

Refund statute not applicable where property has been assessed improperly because of taxpayer's error in reporting and where taxpayer did not make a timely objection. *Coquina Oil v. Larimer Co. Bd. of Equaliz.*, 742 P.2d 932 (Colo. App. 1987), aff'd, 770 P.2d 1196 (Colo. 1989); *Aurora Plaza v. Bd. of Assess. Appeals*, 770 P.2d 1204 (Colo. 1989); *Amoco Prod. v. Bd. of Assess. Appeals*, 770 P.2d 1207 (Colo. 1989).

Where error is due at least in part to the taxing authority, a taxpayer can recover a refund under the clerical error provision of this section, after the time to protest under § 39-5-122 has passed. *Coquina Oil Corp. v. Bd. of Equaliz.*, 770 P.2d 1196 (Colo. 1989).

Section does not enlarge right to contest an overvaluation. It expresses an intent merely to restrict the statute of limitations as to abatement claims. *5050 S. Broadway Corp. v. Arapahoe County Bd. of Comm'rs*, 815 P.2d 966 (Colo. App. 1991).

Clerical error doesn't encompass the mistakes of an assessor who makes factual errors in property valuations. A challenge to a valuation that involves a claim that comparable properties used were overvalued is not clerical error. *5050 S. Broadway Corp. v. Arapahoe County Bd. of Comm'rs*, 815 P.2d 966 (Colo. App. 1991).

Nor taxpayer's error in failing to insure that recorded deed correctly described land conveyed. *Citibank v. Bd. of Assess. Appeals*, 826 P.2d 871 (Colo. 1992).

Taxpayer may seek an abatement and refund under this section even though taxpayer initially protested valuation of the property under § 39-5-122, because the taxpayer did not base its petition for abatement on the ground of overvaluation but on the arbitrator's clerical error. *Landmark Petroleum v. Bd. of County Comm'rs*, 870 P.2d 610 (Colo. App. 1993).

When arbitrator made a clerical error in an award and award does not reflect the valuation intended by the arbitrator, a taxpayer may file for an abatement and refund. Arbitrator attempted to remedy the error within a reasonable time by reporting the error within two days of entering the award. *Landmark Petroleum v. Bd. of County Comm'rs*, 870 P.2d 610 (Colo. App. 1993).

Taxpayer sufficiently demonstrated an injury to a legally protected right when he sought relief for an alleged overvaluation of property. *Utah Motel Assocs. v. Denver County Bd. of Comm'rs*, 844 P.2d 1295 (Colo. App. 1992).

Abatement is not the only remedy for overvaluation of property when property has filed a timely protest to assessor's valuation and appealed. *Tenney v. Bd. of Assess. Appeals*, 856 P.2d 89 (Colo. App. 1993).

Challenges based on overvaluation. Although taxpayers challenged the amount of taxes assessed as excessive, this was not an "overvaluation" as the term is used in this statute because, due to the taxpayers' wrongful inaction, the assessor's BIA valuations are presumed to be valid. Therefore, for purposes of this statute, the assessor's valuation cannot be considered an overvaluation, and this section may not be asserted by a taxpayer to avoid the provisions of § 39-5-118 and the protest procedure under § 39-5-122. *Prop. Tax Adm'r v. Prod. Geophysical*, 860 P.2d 514 (Colo. 1993).

Application of abatement procedure to personal property taxes. The protest procedure set forth in § 39-5-122, as opposed to the abatement procedure set forth in this section, is the exclusive method for challenging personal property BIA evaluations. *Prop. Tax Adm'r v. Prod. Geophysical*, 860 P.2d 514 (Colo. 1993); *Spectra Pub. v. Prop. Tax Adm'r*, 860 P.2d 520 (Colo. 1993).

Taxpayer did not lack standing to file for abatement even though he was the purchaser of the property on which the taxes were due and did not himself pay the taxes. *Utah Motel Assocs. v. Denver County Bd. of Comm'rs*, 844 P.2d 1295 (Colo. App. 1992).

The four-year time limitation for bringing suit under § 20 of article X of the Colorado Constitution (TABOR) does not affect the two-year time limitation set forth in this section. *Prop. Tax Adjustment Specialists, Inc. v. Mesa County Bd. of Comm'rs*, 956 P.2d 1277 (Colo. App. 1998).

In calculating the two-year limitation for filing a personal property tax abatement petition pursuant to subsection (1)(a)(I)(A), the day from which the two-year period runs is excluded and the last day is included. If the last day is a holiday, the period is extended one day. *Golden Aluminum v. Weld County Comm'rs*, 867 P.2d 190 (Colo. App. 1993).

Two-year limitation period may not be applied to park and recreation district that was required to pay taxes due from the previous owner of land but did not receive various notices required by statute. *S. Suburban Park and Recreation Dist. v. Bd. of Assess. Appeals*, 894 P.2d 771 (Colo. App. 1994).

Refunds and abatements for tax years before 1990 are time barred, unless a petition

was filed prior to January 2, 1992. *Woodmoor Imp. v. Prop. Tax Adm'r*, 895 P.2d 1087 (Colo. App. 1994).

No violation of the prohibition against retrospective laws existed in court's application of two-year statute of repose, rather than prior six-year statute, to homeowners' association's petition for abatement and refund. *Woodmoor Imp. v. Prop. Tax Adm'r*, 895 P.2d 1087 (Colo. App. 1994).

It is appropriate for court to give deference to contemporaneous construction of statute by the agency charged with its administration. The property tax administrator had issued a memorandum to county tax assessors to the same effect as the court's holding. *Bd. of Assess. Appeals v. Country Club*, 792 P.2d 299 (Colo. 1990); *Utah Motel Associates v. Denver County Bd. of Comm'rs*, 844 P.2d 1295 (Colo. App. 1992).

Statutes governing abatement and refund procedure do not address whether multiple abatement-refund petitions are permissible regarding same property for same tax year, but second abatement-refund action differing from first only in that taxpayer sought a further valuation reduction is barred under principles of res judicata or claim preclusion. *Red Junction, LLC v. Mesa County Bd. of County Comm'rs*, 174 P.3d 841 (Colo. App. 2007).

For neglect of taxpayer barring relief, see *Miller v. Bd. of County Comm'rs*, 92 Colo. 425, 21 P.2d 714, appeal dismissed, 290 U.S. 586, 54 S. Ct. 78, 78 L. Ed. 518 (1933); *E. A. Stephens & Co. v. Bd. of Equaliz.*, 104 Colo. 556, 92 P.2d 732 (1939).

III. EQUITY JURISDICTION.

Remedy afforded by this section is suit at law and is available in the federal courts the same as in state courts. *Union P. R. R. v. Bd. of Comm'rs*, 222 F. 651 (8th Cir. 1915), rev'd on other grounds, 247 U.S. 282, 38 S. Ct. 510, 62 L. Ed. 1110 (1918).

This section affords an adequate remedy at law in case of an illegal or erroneous levy. *Denver & R. G. R. R. v. Bd. of Comm'rs*, 69 Colo. 212, 193 P. 555 (1920); *Union Nat'l Bank v. Bd. of Comm'rs*, 75 Colo. 298, 225 P. 851 (1924).

Equity will not entertain jurisdiction unless there exists some recognized equitable ground for the granting of relief. *Denver & R. G. R. R. v. Bd. of Comm'rs*, 69 Colo. 212, 193 P. 555 (1920).

Exceptional circumstances required. Upon a full consideration of public interest, of judicial pronouncement in general upon the subject involved, and of this section, which affords a complete remedy in a proper case, it is rarely possible, and then under most exceptional and unusual circumstances, that a cause of action to

restrain the collection of taxes can be stated of which equity will or ought to take cognizance. *Grater v. Logan High Sch. Dist.*, 64 Colo. 600, 173 P. 714 (1918).

Injunctive interference in collection of public revenues opposed. Public interest, judicial announcement, and statutory enactment are opposed to injunctive interference in the collection of the public revenues. *Bd. of Comm'rs v. Atchison, T. & S. F. Ry.*, 52 Colo. 609, 125 P. 528 (1912); *Tallon v. Vindicator Consol. Gold Mining Co.*, 59 Colo. 316, 149 P. 108 (1915); *Nile Irrigation Dist. v. English*, 60 Colo. 406, 153 P. 760 (1915); *Kendrick v. A. Y. & Minnie Mining & Milling Co.*, 63 Colo. 214, 164 P. 1161 (1917).

Tax must be prima facie void before equity will interfere. It is a prerequisite, before a court

of equity will interfere to restrain the collection of taxes, as a general rule, though there may be some exceptions, that the tax must be prima facie void. *Tallon v. Vindicator Consol. Gold Mining Co.*, 59 Colo. 316, 149 P. 108 (1915).

Principles of equity did not prohibit application of two-year statute of repose where homeowners' association failed to allege that assessor concealed facts or otherwise prevented it from filing a timely petition, was aware of its status as a nonprofit association, received yearly tax assessments, and failed to file a petition for abatement until eight months after due date. *Woodmoor Imp. v. Prop. Tax Adm'r*, 895 P.2d 1087 (Colo. App. 1994).

39-10-114.5. Decision - review - judicial review. (1) If the board of county commissioners, pursuant to section 39-10-114 (1), or the property tax administrator, pursuant to section 39-2-116, denies the petition for refund or abatement of taxes in whole or in part, the petitioner may appeal to the board of assessment appeals pursuant to the provisions of section 39-2-125 within thirty days of the entry of any such decision.

(2) If the petitioner has appealed to the board of assessment appeals and the decision of the board of assessment appeals is against the petitioner, the petitioner may petition the court of appeals for judicial review according to the Colorado appellate rules and the provisions of section 24-4-106 (11), C.R.S. If the decision of the board is against the respondent, the respondent, upon the recommendation of the board that it either is a matter of statewide concern or has resulted in a significant decrease in the total valuation for assessment of the county wherein the property is located, may petition the court of appeals for judicial review according to the Colorado appellate rules and the provisions of section 24-4-106 (11), C.R.S. In addition, if the decision of the board is against the respondent, the respondent may petition the court of appeals for judicial review of alleged procedural errors or errors of law when the respondent alleges procedural errors or errors of law by the board of assessment appeals. If the board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation for assessment of the county in which the property is located, the respondent may petition the court of appeals for judicial review of such questions.

Source: L. 90: Entire section added, p. 1695, § 14, effective June 9. L. 96: (2) amended, p. 651, § 6, effective May 1.

ANNOTATION

The 30-day time period begins on the date notice was mailed to the taxpayer's last known address when nondelivery of notice attributable to taxpayer's own failure to provide a current address. *Ward v. Douglas County Bd. of Comm'rs*, 886 P.2d 310 (Colo. App. 1994).

Taxpayer fully exhausted the available administrative remedies, giving the state board of assessment appeals (BAA) jurisdiction to consider the appeal, even though taxpayer did not attend the county hearing or present evidence, where taxpayer timely filed a petition for refund or abatement of real property taxes with the county and received notice of a hearing;

after the mandatory hearing, received notice of the county's denial of the petition and was informed that it had the right to appeal the board's decision to the BAA; and taxpayer then filed a timely petition with the BAA. *Isbill Assocs., Inc. v. Jefferson County Bd. of County Comm'rs*, 894 P.2d 52 (Colo. App. 1995).

Under the abatement and refund scheme, only taxpayers are authorized to appeal actions of the property tax administrator to the board of assessment appeals, and then only to the extent the petition has been denied. By approving taxpayer's petition "conditionally" or otherwise and submitting it to the property tax administrator for further action, the board of

county commissioners' procedural rights as a party ended under the statutory scheme governing abatement and refund proceedings. *Huerfano County Bd. of County Comm'rs v. Atlantic Richfield Co.*, 976 P.2d 893 (Colo. App. 1999).

The abatement and refund procedure under this section is a separate and independent procedural system than the protest and adjustment procedure and is governed by a different statute. *Huerfano County Bd. of County*

Comm'rs v. Atlantic Richfield Co., 976 P.2d 893 (Colo. App. 1999).

Court of appeals' review is limited to the propriety of the board of assessment appeals' determinations, not those of the assessor. *Home Depot USA, Inc. v. Pueblo County Bd. of Comm'rs*, 50 P.3d 916 (Colo. App. 2002).

Applied in *Prop. Tax Adjustment Specialists, Inc. v. Mesa County Bd. of Comm'rs*, 956 P.2d 1277 (Colo. App. 1998).

39-10-115. Certificate of taxes due. (1) Upon request, the treasurer shall certify in writing the full amount of taxes due upon any parcel of real property or mobile home in his or her county, and all outstanding sales for unpaid taxes as shown by the records of his or her office or the records of the department of revenue, with the amount required for redemption of such sales, if the same still are redeemable. The treasurer shall include on such certificate of taxes due an itemized list of the mill levies and amount of taxes and assessments imposed by each taxing jurisdiction and a statement that information regarding special taxing districts and the boundaries of such districts may be on file or deposit with the board of county commissioners, the county clerk and recorder, or the county assessor. A fee shall be collected for each such certificate issued by him or her, as provided in section 30-1-102, C.R.S.

(2) When signed by the treasurer, such certificate, showing payment of all taxes due and the redemption of all outstanding tax sales, shall be conclusive evidence for all purposes and against all persons that the parcel of real property or mobile home therein described was, at the time, free and clear of all taxes due and from all tax sales except tax sales whereon the time for redemption had already expired and the purchaser had received a deed.

(3) Any loss resulting to any person from an error in a tax certificate issued by the treasurer shall be paid by the county represented by the treasurer issuing such certificate.

(4) No person other than the treasurer or an authorized agent of the treasurer shall issue any property tax certificate.

Source: L. 64: R&RE, p. 722, § 1. C.R.S. 1963: § 137-10-15. L. 69: p. 1122, § 1. L. 71: p. 327, § 6. L. 82: (1) amended, p. 551, § 16, effective July 1. L. 83: (2) amended, p. 2053, § 26, effective October 14. L. 90: (4) added, p. 1643, § 2, effective May 22. L. 91: (1) amended, p. 794, § 23, effective January 1, 1992. L. 2000: (1) amended, p. 1638, § 16, effective June 1.

ANNOTATION

Law reviews. For comment on *Burton v. City & County of Denver* appearing below, see 9 Rocky Mt. L. Rev. 289 (1937). For comment on *Denver v. Highlander Boy Found.* appearing below, see 11 Rocky Mt. L. Rev. 124 (1939).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Section is constitutional. This section does not violate the provisions of §§ 3, 8, 9, and 10 of art. X, Colo. Const., nor §§ 25 and 38 of art. V, Colo. Const. *Burton v. City & County of Denver*, 99 Colo. 207, 61 P.2d 856 (1936).

Plaintiff, a quasi-municipal corporation and political subdivision of the state, was not a person under § 39-1-102 (9) and did not have standing to seek damages pursuant to subsection (3) of this section. *Bear Creek Water and Sanitation Dist. v. Bd. of County Comm'rs of Jefferson County*, 902 P.2d 904 (Colo. App. 1995).

Applied in *Nat'l Sur. Co. v. Canon*, 62 Colo. 401, 163 P. 284 (1917); *City & County of Denver v. Highlander Boy Found.*, 102 Colo. 365, 79 P.2d 361 (1938).

39-10-116. Civil penalty for checks not paid upon presentment. The treasurer shall assess a penalty up to the amount authorized in section 13-21-109 (1) (b), C.R.S., against any person who issues a check to the treasurer in payment of taxes, interest, fees, or other

charges collectible by the treasurer that is not paid upon its presentment. The penalty provided in this section shall be assessed in addition to any other penalties or interest provided by law.

Source: L. 79: Entire section added, p. 1421, § 6, effective January 1, 1980. **L. 88:** Entire section amended, p. 1106, § 2, effective January 1, 1989. **L. 95:** Entire section amended, p. 36, § 2, effective March 17.

ARTICLE 11

Sale of Tax Liens

Editor's note: This article was repealed and reenacted in 1964. For historical information concerning the repeal and reenactment, see the editor's note before the article 1 heading.

Law reviews: For article, "Survey of Colorado Tax Liens", see 14 Colo. Law. 1765 (1985).

39-11-100.3.	Definitions.	39-11-124.	Counties, prior sales validated.
39-11-101.	Notice to delinquent owner.	39-11-125.	Disposal of certificates by districts.
39-11-102.	Treasurer to publish and post notice.	39-11-126.	Agreement with county commissioners.
39-11-103.	Treasurer to make affidavit of posting.	39-11-127.	Irrigation or drainage districts, prior sales validated.
39-11-104.	Publisher's affidavit - form.	39-11-128.	Condition precedent to deed - notice.
39-11-105.	Selection of newspaper publishing notice.	39-11-129.	Tax deed - issuance, execution, requirements.
39-11-106.	Advertising and auction fees.	39-11-130.	Fees included in redemption money.
39-11-107.	Erroneous assessments - abatement.	39-11-131.	Notice of application for deed.
39-11-108.	Manner of conducting public auction - definitions.	39-11-132.	Prior notices or requests containing more than one parcel - validation. (Repealed)
39-11-109.	Time of public auction.	39-11-133.	Suit to quiet title.
39-11-110.	When public auction can be held.	39-11-134.	Defects in tax deed, effect.
39-11-111.	Method of payment.	39-11-135.	Form of tax deed.
39-11-112.	Erroneous name or assessment in wrong county - effect.	39-11-136.	Treasurer to execute deed - effect.
39-11-113.	Abbreviations, letters, and figures may be used.	39-11-137.	Validation of acknowledgments of tax deeds.
39-11-114.	Record of sales of tax liens on real estate and mobile homes.	39-11-138.	When successor of treasurer shall act.
39-11-115.	To whom tax lien shall be sold.	39-11-139.	Posting list of tax sale certificates and tax deeds.
39-11-116.	Procedure when purchaser fails to pay.	39-11-140.	Tax deed recorded - entry.
39-11-117.	Certificate of purchase.	39-11-141.	Action to determine validity of certificates.
39-11-118.	Certificate of purchase assignable.	39-11-142.	Disposition of certificates held by counties.
39-11-119.	Subsequent payment by holder.	39-11-143.	Appraisal - county may retain, lease, or sell - definitions.
39-11-120.	Presentation of certificates for deed.	39-11-144.	County lands, prior sales validated.
39-11-121.	Municipalities, prior sales validated.	39-11-145.	Proceeds of sales.
39-11-122.	Transfer of certificates by counties.	39-11-146.	Lien of special assessment not affected.
39-11-123.	Transfer of certificates - irrigation or drainage district taxes.	39-11-147.	Treasurer to report payments.

39-11-148.	Limitations on tax certificates - special improvement liens.		ees may not acquire a tax lien or property by sale of a tax lien.
39-11-149.	Sales en masse valid.		
39-11-150.	Sales of tax liens on severed mineral interests.	39-11-152.	Combined sale of delinquent tax liens and special assess- ment liens.
39-11-151.	County officials and employ-		

39-11-100.3. Definitions. As used in this article, unless the context otherwise requires:

- (1) "Date of sale" means the date on which a public auction begins.
- (2) "Electronic funds transfer" means a transfer of funds initiated by using an electronic terminal, telephonic instrument, or computer or magnetic tape to order or authorize a financial institution to credit or debit an account. "Electronic funds transfer" does not include a transaction originated by check, draft, or similar paper instrument.
- (3) "Negotiable paper" means a bank check, draft, express or post office money order, or cashier's checks approved by the treasurer.
- (4) "Public auction" means the sale of lands or town lots under this article at a venue or through a medium that allows members of the public to bid and purchase the lands or town lots.

Source: L. 2005: Entire section added, p. 1234, § 1, effective June 3.

39-11-101. Notice to delinquent owner. The treasurer shall make a list of all lands and town lots the tax liens on which are subject to sale, describing such land and town lots as the same are described on the tax roll. Except as otherwise provided in section 39-2-117 (1) (a), no later than September 1 of each year, the treasurer shall send a notice by mail, at the person's last-known address, to each person by whom taxes for the previous year are known to be due and unpaid. The notice shall indicate the amount of the person's delinquency and state that if the amount of the delinquency is not paid by the date specified in the notice, which shall not be less than fifteen days from the date of mailing of the notice, the treasurer will advertise and sell a tax lien on the person's property on the date specified in the notice at public auction for the delinquent taxes, interest, and applicable fees. If such list is not made until after September 1, the sale held thereunder shall not be void by reason thereof.

Source: L. 64: R&RE, p. 723, § 1. **C.R.S. 1963:** § 137-11-1. **L. 85:** Entire section amended, p. 1234, § 1, effective July 1. **L. 88:** Entire section amended, p. 1293, § 26, effective May 23. **L. 92:** Entire section amended, p. 2230, § 17, effective April 9. **L. 94:** Entire section amended, p. 756, § 7, effective April 20. **L. 96:** Entire section amended, p. 116, § 4, effective March 25. **L. 2005:** Entire section amended, p. 1234, § 2, effective June 3. **L. 2007:** Entire section amended, p. 18, § 1, effective February 20.

Cross references: For time when tax lien attaches, see § 39-1-107.

ANNOTATION

Law reviews. For note, "Tax Deeds in Colorado", see 18 Rocky Mt. L. Rev. 393 (1946).

Substantial departure from section as to land description voids sale. Where the assessment roll upon which the tax sale was based described the tract in question as containing 160 acres, the notice of tax sale, as published, de-

scribed the tract as 36 acres, and the notice posted by the treasurer described it as 60 acres, there was a substantial departure from this section which is fatal to the validity of the sale. *Callbreath v. Hapney*, 24 Colo. App. 202, 132 P. 1143 (1913) (decided under former law).

39-11-102. Treasurer to publish and post notice. (1) The treasurer shall cause the notice described in subsection (2) of this section to be published in the newspaper selected pursuant to section 39-11-105, the first publication being at least four weeks before the date of sale, and shall post a written or printed notice in a conspicuous place in the office of the treasurer for not less than four weeks before the date of sale. If there is no newspaper

published in the county, a like notice shall be given by posting one written or printed notice for the above length of time on or near the outer door of the treasurer's office. When publication is made in a weekly newspaper, the notice shall be published in three successive weekly issues. When publication is made in a daily newspaper, the notice shall be published only three times, once each week, on the same day of the week.

(2) The notice of sale at public auction shall contain:

- (a) A description of the lands and town lots on which the tax liens are subject to sale;
- (b) The date, time, and place of the tax lien sale, including the electronic address if the public auction is conducted by means of the internet or other electronic medium;
- (c) The location of computer workstations that are available to the public and information about how to obtain instructions on accessing the public auction and submitting bids if the public auction is conducted by means of the internet or other electronic medium; and
- (d) If the public auction is conducted by means of the internet or other electronic medium, a statement that the bidding rules for the public auction will be posted on the internet or other electronic medium used to conduct the public auction at least two weeks before the date of sale.

Source: L. 64: R&RE, p. 723, § 1. C.R.S. 1963: § 137-11-2. L. 94: Entire section amended, p. 756, § 8, effective April 20. L. 2005: Entire section amended, p. 1235, § 3, effective June 3.

ANNOTATION

Annotator's note. The following annotations include a case decided under this section as it existed prior to its 1964 repeal and reenactment.

Purpose of this section is to give the fullest publicity to the notice of tax sale and list of delinquent taxes. *Pelton v. Muntzing*, 24 Colo. App. 1, 131 P. 281 (1913).

Treasurer to see that notice stays posted.

This section contemplates a single act of posting a notice by the treasurer in a certain place within a prescribed time and imposes on him the further duty to see that it remains so posted until the day of sale. *Pelton v. Muntzing*, 24 Colo. App. 1, 131 P. 281 (1913).

39-11-103. Treasurer to make affidavit of posting. The treasurer shall also make, or cause to be made, an affidavit showing the posting of such list and notice, all of which affidavits shall be deposited by the treasurer with the county clerk and recorder to be filed and entered by the county clerk and recorder in the reception book or other permanent record of said office and there carefully preserved.

Source: L. 64: R&RE, p. 723, § 1. C.R.S. 1963: § 137-11-3. L. 94: Entire section amended, p. 756, § 9, effective April 20.

ANNOTATION

Annotator's note. The following annotations include a case decided under this section as it existed prior to its 1964 repeal and reenactment.

Legislative intent to create record. This section manifests a legislative intent that affidavits should become a permanent, enduring record of the fact of publication of the tax list. *Herr v. Graden*, 22 Colo. App. 511, 127 P. 319 (1912), rev'd on other grounds, 59 Colo. 372, 148 P. 863 (1915).

Purpose for requiring deposit of affidavits is to furnish proof. The sole purpose for requiring the deposit of affidavits with the county clerk is to preserve and furnish proof that the requisite notices of the sales of property for delinquent taxes were given in the manner required by law, when that question becomes ma-

terial. *Bertha Gold Mining & Milling Co. v. Burr*, 31 Colo. 264, 73 P. 36 (1903); *Johnson v. Cork*, 106 Colo. 72, 102 P.2d 471 (1940).

The evident purpose of this section is to make the affidavit exclusive evidence of a compliance with the section with reference to notice by publication. This is in accordance with the fundamental rule that where proof by written evidence is required, oral evidence will not be received, unless in case of loss or destruction of the writing. *Rustin v. Merchants' & Miners' Tunnel Co.*, 23 Colo. 351, 47 P. 300 (1896).

Affidavits are not required to be filed at any particular time, nor does the failure to file them before the issuance of a tax deed render such deed invalid. *Bertha Gold Mining & Milling Co. v. Burr*, 31 Colo. 264, 73 P. 36 (1903);

Sternberger v. Moffat, 44 Colo. 520, 99 P. 560 (1908).

They must show substantial compliance with requirements. It is evident that the affidavit must be sufficiently certain and specific to reasonably show that, in fact, the requirements of this article relative to the contents of the notice have been substantially complied with, and that the notice posted referred to some particular sale. *Am. Bond & Inv. Co. v. Hopkins*, 46 Colo. 460, 104 P. 1040 (1909).

Absence of affidavit is prima facie proof that proper notice was not given. Proof that

affidavits are not on file with the county clerk would prima facie establish the tax deed invalid, not, however, upon the ground that they had not been filed, but because their absence would be prima facie proof that the requisite notices of sale had not been given. *Bertha Gold Mining & Milling Co. v. Burr*, 31 Colo. 264, 73 P. 36 (1903); *Am. Bond & Inv. Co. v. Hopkins*, 46 Colo. 460, 104 P. 1040 (1909).

Applied in *Norris v. Kelsey*, 23 Colo. App. 555, 130 P. 1088 (1913); *Colpitts v. Fastenau*, 117 Colo. 594, 192 P.2d 524 (1948).

39-11-104. Publisher's affidavit - form. (1) Every publisher or printer who publishes such list and notice, immediately after the last publication thereof, shall transmit to the treasurer of the proper county an affidavit of such publication made by such publisher, printer, or some other person to whom the fact of publication is known, and no publisher or printer shall be paid for such publication if he fails to transmit such affidavit within fourteen days after the last publication.

(2) Such affidavit shall be substantially in the following form:

"I,, publisher (or printer) of the, a newspaper, printed and published in the county of and state of Colorado, do hereby certify that the foregoing notice and list were published in said newspaper, once in each week, for successive weeks, the last of which publications was made prior to the day of, A.D. 20..., and that copies of each number of said paper in which said notice and list were published were delivered by carriers or transmitted by mail to each of the subscribers of said paper, according to the accustomed mode of business in this office.

STATE OF COLORADO

Publisher (or Printer) of the

County of

SS.

The above certificate of publication was subscribed and sworn to before me by the above named, who is personally known to me to be the identical person described in the above certificate, on the day of, A.D. 20....

(SEAL)"

Source: L. 64: R&RE, p. 723, § 1. C.R.S. 1963: § 137-11-4.

ANNOTATION

- I. General Consideration.
- II. Form and Sufficiency of Affidavit.

I. GENERAL CONSIDERATION.

Law reviews. For note, "Analysis of Basic Statutes on Legal Publications", see 19 Rocky Mt. L. Rev. 380 (1947).

Annotator's note. The following annotations include a case decided under this section as it existed prior to its 1964 repeal and reenactment.

Purpose of affidavit requirement. The purpose of this section, requiring the affidavit and its careful preservation by the county clerk is to make it exclusive evidence of the fact and man-

ner of the publication. Except, perhaps, in case of its destruction, no other kind of proof can be substituted for it. *Paine v. Palmborg*, 20 Colo. App. 432, 79 P. 330 (1905); *Herr v. Graden*, 33 Colo. 527, 81 P. 242 (1905); *Sternberger v. Moffat*, 44 Colo. 520, 99 P. 560 (1908).

Proper affidavit is prerequisite to valid tax deed. An affidavit of publication of notice of sale made in conformity with this section and filed in the proper office is a prerequisite to a valid tax deed. *Charlton v. Kelly*, 24 Colo. 273, 50 P. 1042 (1897); *Concord Corp. v. Huff*, 144 Colo. 72, 355 P.2d 73 (1960).

Affidavit of publisher's foreman competent proof of publication. The foreman for the pub-

lisher of the paper in which the tax sale notice is published would know whether the notice and list had been published. His affidavit, therefore, is competent proof to establish the publication of the tax sale notice. *Herr v. Graden*, 59 Colo. 372, 148 P. 863 (1915).

Applied in *Bertha Gold Mining & Milling Co. v. Burr*, 31 Colo. 264, 73 P. 36 (1903); *Gilbreath v. Doe*, 24 Colo. App. 205, 132 P. 1146 (1913).

II. FORM AND SUFFICIENCY OF AFFIDAVIT.

The prescribed form includes all allegations deemed necessary. When the prescribed form is used, it includes all allegations which the general assembly deemed necessary for the purpose. *Herr v. Graden*, 22 Colo. App. 511, 127 P. 319 (1912), *rev'd on other grounds*, 59 Colo. 372, 148 P. 863 (1915).

The statutory form of affidavit need not be literally followed, but there can be no excuse for disregarding its substantial requisites. *Morris v. St. Louis Nat'l Bank*, 17 Colo. 231, 29 P. 802 (1892).

Affidavit failing to show publication of time and place of sale is insufficient. An affi-

davit of publication of notice of a tax sale which states that the list of lands for sale was published for four successive weeks in a weekly newspaper, but which fails to show that the notice of the time and place of sale was published, is insufficient to support a tax sale. *Paine v. Palmborg*, 20 Colo. App. 432, 79 P. 330 (1905).

Affidavit failing to show required number of publications is insufficient. An affidavit of publication of notice of a tax sale which states that the notice was published in a daily paper on September 6, and that the last publication was made prior to October 1, is insufficient, as it shows only one publication, while § 39-11-102 requires the publication to be made once a week for four consecutive weeks. *Paine v. Palmborg*, 20 Colo. App. 432, 79 P. 330 (1905).

Affidavit failing to show proper delivery of papers is insufficient. Unless the affidavit of publication of notice of a tax sale shows that copies of each number of the paper in which the notice was published were delivered or transmitted to each subscriber of the paper according to the accustomed mode of business of the office, it is insufficient, and a sale based thereon is invalid. *Rustin v. Merchants' & Miners' Tunnel Co.*, 23 Colo. 351, 47 P. 300 (1896); *Lambert v. Shumway*, 36 Colo. 350, 85 P. 89 (1906).

39-11-105. Selection of newspaper publishing notice. It is the duty of the board of county commissioners of each county to select a newspaper of general circulation published or having general circulation in said county, in which the treasurer shall publish the delinquent tax list of his county, and for such service the board shall allow payment not exceeding the rate as provided by law.

Source: L. 64: R&RE, p. 724, § 1. C.R.S. 1963: § 137-11-5.

ANNOTATION

Law reviews. For comment on *Blue River Co. v. Rizzuto* appearing below, see 30 *Rocky Mt. L. Rev.* 234 (1958).

Annotator's note. The following annotations include a case decided under this section as it existed prior to its 1964 repeal and reenactment.

This section is mandatory, not directory. *Blue River Co. v. Rizzuto*, 135 Colo. 472, 312 P.2d 1023 (1957).

Selection of newspaper for publication is jurisdictional. The selection or designation of a newspaper for the publication of delinquent tax lists is jurisdictional. *Blue River Co. v. Rizzuto*, 135 Colo. 472, 312 P.2d 1023 (1957).

Selection of official county newspaper is sufficient compliance. Publishing the delinquent tax lists in a newspaper which had been duly selected by the county commissioners as the official county newspaper, without specific reference to publication of delinquent tax lists, is a sufficient compliance with this section.

Linville v. Russell, 168 Colo. 459, 452 P.2d 18 (1969).

Absent a selection, the proceedings and sale are void. *Blue River Co. v. Rizzuto*, 135 Colo. 472, 312 P.2d 1023 (1957).

County may change selection of newspaper before publication. A county may rescind the selection of a newspaper to publish notice of tax sale and delinquent tax list, but not after publication has been made. *Bd. of Comm'rs v. Wood*, 80 Colo. 279, 250 P. 860 (1926).

County is not required to ask for bids for publication of notices of tax sale and delinquent tax list. *Bd. of Comm'rs v. Wood*, 80 Colo. 279, 250 P. 860 (1926).

Expense of publication must be paid by county. The expense of the publication of the notice of tax sale and delinquent tax list must be paid by the county. *Bd. of Comm'rs v. Wood*, 80 Colo. 279, 250 P. 860 (1926).

39-11-106. Advertising and auction fees. (1) To the amount of delinquent taxes there shall be added a fee to cover the cost of advertising, as provided in section 30-1-102, C.R.S. If the public auction is conducted by means of the internet or other electronic medium, the treasurer may add a fee to cover the cost of conducting the public auction.

(2) The treasurer of each county shall deliver his list of all lots or tracts of land for which tax liens are to be advertised for sale to the publisher or printer at least ten days before the date of the first publication.

Source: L. 64: R&RE, p. 724, § 1. L. 65: p. 1110, § 1. C.R.S. 1963: § 137-11-6. L. 67: p. 212, § 3. L. 71: p. 328, § 7. L. 85: (2) amended, p. 1234, § 2, effective July 1. L. 91: (2) amended, p. 1972, § 2, effective March 27. L. 2005: (1) amended, p. 1236, § 4, effective June 3.

39-11-107. Erroneous assessments - abatement. It is the duty of the treasurer of each county, before making sale of tax liens on any lots or land for unpaid taxes, to carefully examine and compare the delinquent list with the assessment roll and block books in his office, and to omit from such sale the tax liens on all lots and lands doubly or erroneously assessed, insofar as he is able to ascertain the same, and to make an itemized report to the board of county commissioners of his county showing such double or erroneous assessment. The board of county commissioners, on receipt of such itemized report, by resolution to be entered in its proceedings, shall abate the taxes levied upon such double or erroneous assessments.

Source: L. 64: R&RE, p. 725, § 1. C.R.S. 1963: § 137-11-7. L. 85: Entire section amended, p. 1235, § 3, effective July 1.

39-11-108. Manner of conducting public auction - definitions. (1) On the day designated in the notice of sale, the treasurer shall commence the public auction of the tax liens on those lands and town lots on which the taxes, interest, and fees have not been paid and shall continue the same from day to day, Saturdays and Sundays excepted, until the tax liens on each parcel are sold. Where two or more lots or tracts of land are valued and assessed as one parcel, the treasurer shall sell a single tax lien on such land or tract. The public auction shall be held at the treasurer's office or at another location in the county designated by the treasurer, and all lands and town lots offered at the public auction on the same date of sale shall be offered for public auction at the same location; except that the public auction may be conducted by means of the internet or other electronic medium.

(2) A public auction conducted by means of the internet or other electronic medium to sell lands and town lots under this article shall allow members of the public to submit bids by computer and permit the treasurer to accept bids for as long as the treasurer deems necessary. The county and its employees acting in their official capacity in preparing, conducting, and executing a sale of lands and town lots under this article are not liable for the failure of a device that prevents a person from participating in a sale under this article. As used in this subsection (2), "device" includes, but is not limited to, computer hardware, a computer network, a computer software application, and an internet web site.

(3) If there is no bid for any tax lien offered, the offering of such tax lien shall remain open until all the tax liens are offered for sale and the sale is ended or until the treasurer is satisfied that no more sales can be effected, whereupon it is the treasurer's duty to strike off to the county, city, town, or city and county the tax liens on those lands and town lots remaining unsold, for the amount of such taxes, delinquent interest, and fees thereon. When the treasurer strikes off a tax lien on any tract of land or town lot, the treasurer shall issue to the county, city, town, or city and county a certificate of purchase. No taxes levied against any lands for which a county has purchased a tax lien under the provisions of this section shall be payable until the same have been derived by the county from the sale of a tax lien on such lands or from the redemption of such lands.

Source: L. 64: R&RE, p. 725, § 1. C.R.S. 1963: § 137-11-8. L. 85: Entire section amended, p. 1235, § 4, effective July 1. L. 92: Entire section amended, p. 2230, § 18, effective April 9. L. 2005: Entire section amended, p. 1236, § 5, effective June 3.

ANNOTATION

- I. General Consideration.
- II. Sale in Entirety or Parcels.
- III. Purchase by County.

I. GENERAL CONSIDERATION.

Law reviews. For comment, "The Effect of Certified Realty Corp. v. Smith on Mortgage Foreclosure in Colorado", see 52 U. Colo. L. Rev. 301 (1981).

Annotator's note. The following annotations include a case decided under this section as it existed prior to its 1964 repeal and reenactment.

Purpose of section. The purpose of this section is to give a reasonable opportunity to all desiring to bid, and to make sure that there are no bidders present before striking any property off to the county. *Bennett v. Shotwell*, 118 Colo. 206, 194 P.2d 335 (1948).

Section requires strict compliance. This section authorizing the sale of property for taxes must be strictly complied with or the proceedings will be void. *Charlton v. Toomey*, 7 Colo. App. 304, 43 P. 454 (1896), rev'd on other grounds, 24 Colo. 278, 50 P. 1042 (1897).

Void tax deed cannot be supported by evidence aliunde. A tax deed, void on its face because of its showing a fatal irregularity in the conduct of the sale, cannot be supported or validated by evidence aliunde that the sale was conducted in conformity with this section. *Page v. Gillett*, 47 Colo. 289, 107 P. 290 (1910).

Proof of damages is unnecessary where statute governing sale is violated. Once it is shown that a positive mandate or statute has been ignored in connection with a tax sale, the grantor under a tax deed flowing therefrom will not be heard to say that his adversary must go further and prove the damages he has suffered as a result of the violation of the statute. *Newcomb v. Henderson*, 22 Colo. App. 167, 122 P. 1125 (1912).

Formal rereading of notice of sale at reoffering not required. The requirement of this section is only that the treasurer shall reoffer the property the next day. It does not require the formal rereading of the notice of sale or legal description of the property. *Bennett v. Shotwell*, 118 Colo. 206, 194 P.2d 335 (1948).

Failure to show first offering date not invalidation of deed. A tax deed is not invalid because of its failure to disclose the day upon which the land involved was first offered for sale for delinquent taxes. *Ford v. Genereux*, 104 Colo. 17, 87 P.2d 749 (1939).

Applied in *City & County of Denver v. Keeler*, 48 Colo. 54, 108 P. 998 (1910); *Sherman v. Greeley Bldg. & Loan Ass'n*, 66 Colo. 288, 181 P. 975 (1919).

II. SALE IN ENTIRETY OR PARCELS.

Object of separate valuation, assessment, and sale is to create a lien upon each tract for its own assessment and levy. It is manifest that this is not done if the sale is en masse for a gross sum. *Page v. Gillett*, 47 Colo. 289, 107 P. 290 (1910).

The only land which the treasurer may sell jointly is such as the assessor can jointly value and assess, namely, adjoining parcels, returned by the same person. *Page v. Gillett*, 47 Colo. 289, 107 P. 290 (1910); *Gilbreath v. Doe*, 24 Colo. App. 205, 132 P. 1146 (1913).

Sale in parcels of body of land assessed as a whole is violation of this section and one contesting the sale is not required to prove that he has sustained damage by this violation of the statute. *Newcomb v. Henderson*, 22 Colo. App. 167, 122 P. 1125 (1912).

Sale en masse for taxes of noncontiguous lands for a gross sum is void; and a tax deed which, upon its face, shows that the sale was made in this manner is void. *Page v. Gillett*, 47 Colo. 289, 107 P. 290 (1910).

A tax deed is not objectionable because it conveys several noncontiguous tracts of land. *Barnett v. Jaynes*, 26 Colo. 279, 57 P. 703 (1899).

III. PURCHASE BY COUNTY.

County becomes purchaser only in default of outside bid. Before land may be legally bid in by the county, it must, after being first offered, be continually offered from day to day until the sale is concluded, and the county can only become a purchaser of the entire tract in default of an outside bid, after the same has been offered each day. *Empire Ranch & Cattle Co. v. Howell*, 23 Colo. App. 265, 129 P. 245 (1913).

Certificate of purchase must be dated as of sale date. The certificate of purchase issued to the county for land struck off to it at the tax sale must be dated as of the day of the sale. *Dalander v. Karr*, 21 Colo. App. 170, 121 P. 136 (1912).

Tax deed cannot issue while certificate of purchase outstanding. A tax deed cannot issue on property so long as an outstanding tax certificate of purchase is still held by the county and a deed issued in such circumstances will be held invalid. *Cowen v. Driscoll Constr. Co.*, 97 Colo. 74, 47 P.2d 390 (1935).

Taxes are not paid by striking off the land to the county. *Hecox v. Teller County*, 198 F. 634 (8th Cir. 1912), appeal dismissed, 234 U.S. 766, 34 S. Ct. 675, 58 L. Ed. 1582 (1914).

Unnecessary for county to pay taxes until property sold. It is not necessary for the county, after the purchase of a tax sale certificate, to pay

any taxes that may have become due subsequent to the issuance of said tax sale certificate, until the county has sold the property which it has

acquired by virtue of the treasurer's deed. *Rock v. Fastenau*, 122 Colo. 41, 219 P.2d 781 (1950).

39-11-109. Time of public auction. The public auction of tax liens on lands upon which taxes remain delinquent shall commence on or before the second Monday in December of each year.

Source: L. 64: R&RE, p. 725, § 1. **C.R.S. 1963:** § 137-11-9. **L. 85:** Entire section amended, p. 1235, § 5, effective July 1. **L. 2005:** Entire section amended, p. 1237, § 6, effective June 3.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Tax deed void if based on sale held later than time designated. A tax deed based on a sale held later than the time designated in this section where there is no explanation for the delay is void. *Kingore v. Wallace*, 85 Colo. 381, 276 P. 332 (1929); *Ireland v. Gunnison Mt. Coal & Coke Co.*, 87 Colo. 193, 286 P. 280 (1930); *Hochmuth v. Norton*, 90 Colo. 453, 9 P.2d 1060

(1932); *Sierra Mining Co. v. Lucero*, 118 Colo. 180, 194 P.2d 302 (1948).

A deed that is otherwise void may be reformed in some circumstances. Where the tax sale was lawfully conducted, the deed was duly recorded, and the deed contained only a technical defect, equity permits the reformation of the deed based on extrinsic evidence on the validity of the underlying tax sale. *Bd. of Comm'rs v. Timroth*, 87 P.3d 102 (Colo. 2004).

39-11-110. When public auction can be held. If, from any cause, the tax lien on real property cannot be duly advertised and offered for sale at public auction on or before the second Monday of December, it is the duty of the treasurer to hold the public auction on any subsequent day in which it can be held, allowing time for the publication of notice as provided in section 39-11-102.

Source: L. 64: R&RE, p. 725, § 1. **C.R.S. 1963:** § 137-11-10. **L. 85:** Entire section amended, p. 1236, § 6, effective July 1. **L. 2005:** Entire section amended, p. 1237, § 7, effective June 3.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Intent of section to save late tax sales. This section is intended to save from invalidity a tax sale made after the second Monday in December where it is impossible to commence the sale on that day. *City & County of Denver v. Bach*, 92 Colo. 594, 22 P.2d 1114 (1933).

If a deed shows reason for delayed sale, it is not void. Where a tax deed shows on its face that the sale was held on a day subsequent to that designated by § 39-11-109, without a recital of any cause for the delay such as would authorize a sale on the subsequent day, the deed

shows its falsity; but the deed is not void where it contains a recital of sufficient cause for the delay. *Richardson v. Halbekann*, 97 Colo. 175, 48 P.2d 1014 (1935).

A deed that does not recite the cause for the delay may be reformed through the use of extrinsic evidence in some circumstances. Where the tax sale was lawfully conducted, the deed was duly recorded, and the deed contained only a technical defect, equity permits the reformation of the deed based on extrinsic evidence on the validity of the underlying tax sale. *Bd. of Comm'rs v. Timroth*, 87 P.3d 102 (Colo. 2004).

39-11-111. Method of payment. When the treasurer sells any tax lien on any lands or lots for delinquent taxes, the treasurer may accept payment of the purchase price in the form of cash, negotiable paper, or electronic funds transfer, subject to the treasurer's bidding rules.

Source: L. 64: R&RE, p. 726, § 1. C.R.S. 1963: § 137-11-11. L. 85: Entire section amended, p. 1236, § 7, effective July 1. L. 2005: Entire section amended, p. 1237, § 8, effective June 3.

ANNOTATION

Part payment with bonds and warrants. A purchaser at a tax sale of lands included within an irrigation district may pay in part with bonds

and warrants of the district under the provisions of § 37-41-109. *Tew v. Phillips*, 73 Colo. 408, 216 P. 525 (1923) (decided under former law).

39-11-112. Erroneous name or assessment in wrong county - effect. (1) When tax liens on any lands or town lots are offered for sale for any delinquent taxes, it shall not be necessary to sell the same as the property of any person. No sale of any tax lien on any land or town lots for delinquent taxes shall be considered invalid because charged on the roll in any other name than that of the rightful owner, or charged as unknown; but the tax lien and such land or lots in other respects shall be sufficiently described on the tax roll to identify the same, and the taxes for such land or lots shall be due and unpaid at the time of such sale.

(2) When any land lying in one county is erroneously taxed and a tax lien on such land is sold for delinquent taxes in another county, the county so erroneously taxing and selling a tax lien on such land for delinquent taxes shall be liable to the owner of such land for any expense or damage caused to such owner by such erroneous sale.

Source: L. 64: R&RE, p. 726, § 1. C.R.S. 1963: § 137-11-12. L. 85: Entire section amended, p. 1236, § 8, effective July 1.

ANNOTATION

Annotator's note. The following annotations include a case decided under this section as it existed prior to its 1964 repeal and reenactment.

Description must enable purchaser to know what is for sale. The assessment is made with a view to a possible sale, and the property should, therefore, be so described as to enable the owner to know what land is charged with the tax, and also to enable a possible purchaser to know what land is offered for sale. Hence the description should be sufficient in itself to identify the land or, if reference to a map on record

is required, that should be indicated in the assessment. *Stough v. Reeves*, 42 Colo. 432, 95 P. 958 (1908).

Description by block number without a map is insufficient. The description of a parcel of land, in connection with tax sales, as a portion of an entire larger tract simply by number and block, without any reference to a map, is not sufficient prima facie evidence to identify the portion assessed. *Stough v. Reeves*, 42 Colo. 432, 95 P. 958 (1908).

39-11-113. Abbreviations, letters, and figures may be used. In all advertisements for the sale of tax liens on real property for delinquent taxes and in entries required to be made by the assessor, county clerk and recorder, treasurer, or other officers in lists, books, rolls, certificates, receipts, deeds, or notices, letters, figures, and abbreviations may be used to denote townships, ranges, sections, parts of sections, lots, blocks, dates and amounts of taxes, delinquent interest, and costs.

Source: L. 64: R&RE, p. 726, § 1. C.R.S. 1963: § 137-11-13. L. 85: Entire section amended, p. 1236, § 9, effective July 1. L. 92: Entire section amended, p. 2231, § 19, effective April 9.

39-11-114. Record of sales of tax liens on real estate and mobile homes. (1) The treasurer shall make a correct record of all sales of tax liens on real estate for delinquent taxes in a well-bound book or other permanent record to be kept by the treasurer for that purpose. Said book shall contain:

- (a) The date of sale;
- (b) The description of each tract of land or town lot for which a tax lien is sold;

- (c) The name of the owner thereof, if known;
- (d) The name of the purchaser;
- (e) The total amount of taxes, delinquent interest, and costs at time of sale;
- (f) Columns for amount of subsequent taxes paid by the purchaser and the date of payment;
- (g) To whom assigned and the date of assignment;
- (h) The name of person redeeming and date of redemption;
- (i) The total amount paid for redemption;
- (j) The name of person to whom conveyed and date of deed.

(2) The treasurer shall also note in the tax list, opposite the description of the property for which a tax lien is sold, the fact and date of such sale.

(3) (a) Upon recordation of the tax sale, the treasurer shall also make a separate list of all mobile homes for which tax liens are sold at the sale and file such list with the department of revenue. Such list shall include the mobile home's identification number, year and make, parcel number, and all pertinent tax sale information. For maintaining this recorded tax sale information on mobile homes, the executive director of the department of revenue may impose a fee of five dollars which shall become part of the mobile home tax sale redemption cost.

(b) Notwithstanding the amount specified for the fee in this section, the executive director of the department of revenue by rule or as otherwise provided by law may reduce the amount of the fee if necessary pursuant to section 24-75-402 (3), C.R.S., to reduce the uncommitted reserves of the fund to which all or any portion of the fee is credited. After the uncommitted reserves of the fund are sufficiently reduced, the executive director by rule or as otherwise provided by law may increase the amount of the fee as provided in section 24-75-402 (4), C.R.S.

Source: L. 64: R&RE, p. 726, § 1. C.R.S. 1963: § 137-11-14. L. 82: (3) added, p. 551, § 17, effective July 1. L. 85: IP(1), (1)(b), (2), and (3) amended, p. 1237, § 10, effective July 1. L. 92: (1)(e) amended, p. 2231, § 20, effective April 9. L. 94: IP(1) and (2) amended, p. 756, § 10, effective April 20. L. 96: (2) amended, p. 1393, § 12, effective July 1. L. 98: (3) amended, p. 1347, § 81, effective June 1. L. 2000: (3)(a) amended, p. 1638, § 17, effective June 1.

Cross references: For tax sale procedure and redemption of a mobile home, see § 39-10-111 (10).

ANNOTATION

Annotator's note. The following annotations include a case decided under this section as it existed prior to its 1964 repeal and reenactment.

Record is best evidence of facts contained in it. The tax sale record, being one required by law to be kept by the treasurer, is not only competent, but the best evidence of the facts

required to be stated therein, including the date of sale. *Knowles v. Martin*, 20 Colo. 393, 38 P. 467 (1894); *Empire Ranch & Cattle Co. v. Lanning*, 49 Colo. 458, 113 P. 491 (1911); *Mulqueen v. Lanning*, 53 Colo. 146, 124 P. 577 (1912).

39-11-115. To whom tax lien shall be sold. (1) When the taxes levied for the preceding year or years on any lands remain unpaid, the tax liens on such lands offered at public auction at the times provided by law shall be sold to the persons who pay therefor the taxes, delinquent interest, and fees then due thereon or who further pay the largest amount in excess of said taxes, delinquent interest, and fees. The excess amount shall be credited to the county general fund. Each tax lien shall be sold for an entire piece of property. The taxes, delinquent interest, and fees shall draw interest at the rates fixed by law, and, when the tax liens on any lands are bid in by the county, city, town, or city and county, the amount for which they are bid in shall draw interest at the same rates. Real property for which a tax lien is sold may be redeemed in the manner provided by law.

(2) In order that the public auction may be conducted in an efficient and equitable

manner, the treasurer is hereby granted broad powers to set bidding rules governing the public auction. Such powers shall include, but need not be limited to, the following:

(a) Recognition of buyers in numerical sequence, in rotation, or in the order in which bids are made;

(b) Determining the order in which tax liens are sold, without regard to the order in which they appear in the published notice of sale;

(c) Setting minimum bid increases; and

(d) Setting a minimum total of taxes, delinquent interest, and costs below which competitive bids will not be accepted.

(3) The treasurer may combine and sell as a unit parcels which are contiguous or are contained within one subdivision.

(4) The treasurer shall announce bidding rules at the beginning of the public auction, and the rules announced shall apply to all bidders throughout the public auction. If the public auction is conducted by means of the internet or other electronic medium, the treasurer shall cause the internet bidding rules to be posted on the medium for at least two weeks before the date of sale. The internet bidding rules posted shall apply to all bidders throughout the public auction.

Source: L. 64: R&RE, p. 727, § 1. L. 65: p. 1112, §§ 1, 2. C.R.S. 1963: § 137-11-15. L. 67: p. 213, § 4. L. 85: Entire section amended, p. 1237, § 11, effective July 1. L. 87: Entire section amended, p. 1422, § 1, effective May 8. L. 92: (1) and (2)(d) amended, p. 2231, § 21, effective April 9. L. 2005: (1), IP(2), and (4) amended, p. 1237, § 9, effective June 3.

39-11-116. Procedure when purchaser fails to pay. If a person bidding fails to pay the amount due, the treasurer may again offer the tax lien on such land for sale if the public auction has not closed, and, if it has closed, the treasurer may again advertise it specially in the same manner as in the original advertisement and for not less than one week, after which the treasurer may again offer and sell the tax liens on such lands or lots as provided in section 39-11-115; or at the treasurer's option, the treasurer may recover the amount bid by civil action brought in the name of the county in any court of competent jurisdiction. In a public auction conducted by means of the internet or other electronic medium, if a person bidding fails to pay the amount due, the treasurer may offer the tax lien, without additional advertisement, to another bidder, whether or not the public auction has closed; or at the treasurer's option, the treasurer may recover the amount bid by civil action brought in the name of the county in any court of competent jurisdiction. The treasurer may prohibit a person who fails to pay the amount due from bidding on sales under this article for up to five years.

Source: L. 64: R&RE, p. 727, § 1. C.R.S. 1963: § 137-11-16. L. 85: Entire section amended, p. 1238, § 12, effective July 1. L. 2005: Entire section amended, p. 1238, § 10, effective June 3.

39-11-117. Certificate of purchase. The treasurer shall prepare, sign, and retain for safekeeping or deliver to the purchaser of a tax lien on any real property sold for the payment of delinquent taxes a certificate of purchase describing the property on which the taxes and fees were paid by the purchaser, as the same was described in the record of sales, and also stating the rate of interest and the total amount of all taxes, delinquent interest, and fees on each tract or lot for which the tax lien was sold, as described in the record of sales, and that payment thereof has been made, with columns for subsequent taxes. For each certificate so delivered, the purchaser shall pay a fee to the treasurer as provided in section 30-1-102, C.R.S.

Source: L. 64: R&RE, p. 727, § 1. C.R.S. 1963: § 137-11-17. L. 69: p. 1122, § 2. L. 71: p. 328, § 8. L. 75: Entire section amended, p. 1479, § 4, effective July 1. L. 85:

Entire section amended, p. 1238, § 13, effective July 1. **L. 92:** Entire section amended, p. 2231, § 22, effective April 9. **L. 96:** Entire section amended, p. 1393, § 13, July 1. **L. 2005:** Entire section amended, p. 1238, § 11, effective June 3.

Cross references: For certificate of sale for a mobile home, see § 39-10-111.

ANNOTATION

Annotator's note. The following annotations include a case decided under this section as it existed prior to its 1964 repeal and reenactment.

County treasurer is entitled to fee for issuing certificate of purchase. *Sherman v. Greeley Bldg. & Loan Ass'n*, 66 Colo. 288, 181 P. 975 (1919).

Fee becomes property of collecting officer. A fee which is provided for a specified public

service presumably becomes the property of the officer authorized to collect it, subject to the power of the proper public authority to limit the amount retainable by the officer to a certain sum. *Moffat Tunnel Imp. Dist. v. McGuire*, 103 Colo. 539, 87 P.2d 753 (1939).

39-11-118. Certificate of purchase assignable. Such certificate of purchase shall be assignable by endorsement, and an assignment thereof, when entered upon the record of sales in the offices of the county clerk and recorder and the treasurer, shall vest in the assignee or his legal representative all the right and title of the original purchaser.

Source: **L. 64:** R&RE, p. 728, § 1. **C.R.S. 1963:** § 137-11-18.

ANNOTATION

Annotator's note. The following annotations include a case decided under this section as it existed prior to its 1964 repeal and reenactment.

Assignee becomes lawful holder of certificate even if assignment not recorded. The assignee of a certificate of purchase, who in good faith and for a valuable consideration purchases the interest of his assignor and receives from him the certificate bearing his indorsement, with the intent of transferring to the assignee the right and title represented thereby,

would become the lawful holder of the certificate of sale, even though the assignment was not recorded as provided in this section. *White Cap Mining Co. v. Resurrection Mining Co.*, 115 Colo. 396, 174 P.2d 727 (1946).

Assignment of certificate carries rights of original purchaser. The assignment of a tax sale certificate carries with it and vests in the assignee all the rights of the original purchaser. *Bd. of Comm'rs v. Whelen*, 28 Colo. 435, 65 P. 38 (1901).

39-11-119. Subsequent payment by holder. Any person desiring to pay any subsequent taxes on any lands or town lots for which such person holds the tax certificates shall produce such certificates to the treasurer, or, if certificates are retained by the treasurer, the person shall be notified by the treasurer of the amount due. Upon receipt of payment, the treasurer shall record the amount of the subsequent tax and the date of payment on the permanent record. The treasurer may receive a fee for such services, as provided in section 30-1-102 (1) (j), C.R.S.

Source: **L. 64:** R&RE, p. 728, § 1. **C.R.S. 1963:** § 137-11-19. **L. 69:** p. 1122, § 3. **L. 71:** p. 328, § 9. **L. 75:** Entire section amended, p. 1479, § 5, effective July 1. **L. 83:** Entire section amended, p. 1230, § 20, effective July 1. **L. 94:** Entire section amended, p. 757, § 11, effective April 20. **L. 96:** Entire section amended, p. 1393, § 14, effective July 1.

ANNOTATION

Annotator's note. The following annotations include a case decided under this section as it existed prior to its 1964 repeal and reenactment.

Payment of subsequent taxes is permissive, not mandatory. This section provides for the payment of subsequent taxes by the holder of a

tax certificate, and it clearly appears that the right to pay subsequent taxes is permissive, not mandatory. *Bennett v. Shotwell*, 118 Colo. 206, 194 P.2d 335 (1948).

Payment of subsequent taxes on land in irrigation district. One holding a tax purchase

certificate for lands in an irrigation district is entitled to pay subsequent taxes with interest coupons of the district maturing in a year for which the tax is levied. *Orchard Mesa Farms Co. v. Canon*, 61 Colo. 347, 157 P. 192 (1916).

39-11-120. Presentation of certificates for deed. (1) At any time after the expiration of the term of three years from the date of the sale of any tax lien on any land, or interest therein or improvements thereon, for delinquent taxes, on demand of the purchaser or lawful holder of the certificate of such tax lien, other than the county wherein such property is situated, and on presentation of such certificate of purchase or properly authenticated order of the board of county commissioners, where the certificate has been lost or wrongfully withheld from the owner, and upon proof of compliance with section 39-11-128, the treasurer shall make out a deed for each such lot, parcel, interest, or improvement for which a tax lien was sold and which remains unredeemed and deliver the same to such purchaser or lawful holder of such certificate or order.

(2) The treasurer shall be entitled to a fee for each such deed made and acknowledged by him and a fee for the acknowledgment thereof, as provided in section 30-1-102, C.R.S.

(3) Whenever any certificate given by the treasurer for a tax lien on any land, interest, or improvement sold for delinquent taxes is lost or wrongfully withheld from the rightful owner thereof and such land, interest, or improvement has not been redeemed, the board of county commissioners may receive evidence of such loss or wrongful detention and, upon satisfactory proof of such fact, may cause a certificate of such proof and finding, properly attested by the county clerk and recorder under the seal of the county, to be delivered to such rightful claimant, and a record thereof shall be duly made by the county clerk and recorder in the recorded proceedings of such board.

(4) Whenever any tax lien on any lot or parcel of land, interest therein, or improvement thereon is bid in by or for the county, city, town, or city and county at any tax sale, and a certificate of purchase is made to such county, city, town, or city and county therefor, the treasurer of such county, city, town, or city and county may sell, assign, and deliver any such certificate to any person who desires to purchase the same upon payment to the treasurer of the amount for which said tax lien was bid in by the county, city, town, or city and county with interest and costs accrued thereon from the date of sale, together with a fee for making such assignment, as provided in section 30-1-102, C.R.S., and the taxes assessed thereon since the date of such sale or, in case of a county, city, town, or city and county, for such sum as the board of county commissioners or other board authorized to perform the duties of a board of county commissioners at any regular or special meeting may decide and authorize by order duly entered in the recorded proceedings of such board. Whenever any tax lien on any lot or parcel of land, interest therein, or improvement thereon is bid in by or for a city, town, or city and county, as the case may be, such city, town, or city and county shall be entitled to a deed, as provided for purchasers at tax sales.

Source: L. 64: R&RE, p. 728, § 1. C.R.S. 1963: § 137-11-20. L. 71: p. 329, § 10. L. 75: (2) amended, p. 1480, § 6, effective July 1. L. 85: (1), (3), and (4) amended, p. 1238, § 14, effective July 1.

ANNOTATION

- I. General Consideration.
- II. Assignment by the County.

I. GENERAL CONSIDERATION.

Law reviews. For article, "Property Law", see 32 Dicta 420 (1955). For article, "Delinquent Oil and Gas Ad Valorem Taxes: Protecting

Property Interests", see 16 Colo. Law. 798 (1987).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Purchaser has right to demand deed any time after three years from sale. *Pelton v. Muntzing*, 24 Colo. App. 1, 131 P. 281 (1913).

Purchaser may set process in motion before expiration of time. A purchaser at a tax sale may set into motion the machinery to obtain a deed before the end of the 3-year period of redemption although the tax deed may not properly be issued until the expiration of the time fixed. *Knutson v. Dickson*, 105 Colo. 42, 94 P.2d 691 (1939).

Subsequently assessed taxes must be paid prior to issuance of deed. One who purchases a tax purchase certificate is not entitled to a deed until he has paid all taxes subsequently assessed upon the lands. *Schneider v. Hurt*, 25 Colo. App. 335, 138 P. 422 (1914), *aff'd*, 61 Colo. 104, 156 P. 600 (1916); *Henrie v. Greenlees*, 71 Colo. 528, 208 P. 468 (1922).

Single tender for more than one certificate permitted. A single tender to the county by the purchaser is sufficient, even though the transaction covers several certificates, on several parcels of land, issued pursuant to sales in different years. *Lackey v. Killey*, 80 Colo. 408, 252 P. 351 (1927).

Tax deed may convey more than one tract of land, whether they are contiguous or noncontiguous. *Johnson v. Cork*, 106 Colo. 72, 102 P.2d 471 (1940).

Recordation of assignment is unnecessary to deed's validity. Recording the assignment of a tax sale certificate is not a necessary prerequisite to the validity of the deed issued thereon. *White Cap Mining Co. v. Resurrection Mining Co.*, 115 Colo. 396, 174 P.2d 727 (1946).

Tax lien extinguished by issuance of deed from subsequent sale. A tax lien held by virtue of a certificate issued as result of sale is extinguished by the issuance of a tax deed by the county on a subsequent sale. *Benedict v. Coriolanus Corp.*, 30 Colo. App. 306, 491 P.2d 985 (1971).

Issuance of subsequent corrective tax deed authorized. The county treasurer has authority to issue a second tax deed, for the purpose of correcting a former defective deed, at any time before redemption, and, if he refuses to do so, mandamus will lie to compel him. *Duggan v. McCullough*, 27 Colo. 43, 59 P. 743 (1899).

Speculation in tax certificates allowed. One has the right to speculate in tax certificates if one complies with the law concerning their purchase and assignment. *Lackey v. Killey*, 80 Colo. 408, 252 P. 351 (1927).

Interplay of this section and § 39-11-122. Subsection (4) authorizes the county treasurer to sell any tax certificate for full value without

requiring any action by the county commissioners. Only if the amount to be received is less than such full amount does an order by the commissioners become necessary, in which case § 39-11-122 applies. *RTV, L.L.C. v. Grandote Int'l Ltd.*, 937 P.2d 768 (Colo. App. 1996).

Applied in *Bottom v. Young*, 52 Colo. 533, 125 P. 500 (1912); *Vandermeulen v. Burwell*, 22 Colo. App. 486, 125 P. 131 (1912); *Fishel v. City & County of Denver*, 105 Colo. 120, 95 P.2d 1 (1939); *Swofford v. Colo. Nat'l Bank*, 628 P.2d 184 (Colo. App. 1981).

II. ASSIGNMENT BY THE COUNTY.

This section does not contemplate the issuance of a deed to the county. *Hecox v. Teller County*, 198 F. 634 (8th Cir. 1912); *Bennett v. Shotwell*, 118 Colo. 206, 194 P.2d 335 (1948).

There is no limitation on time within which assignment may be made, provided that the assignment of the certificate by the treasurer and board of county commissioners is after the expiration of three years from the date of the certificate. *Lovelace v. Tabor Mines & Mills Co.*, 29 Colo. 62, 66 P. 892 (1901).

Board cannot make actual assignment. While this section confers upon the board of county commissioners the authority to determine the sum at which the certificate may be sold, it does not further extend the authority of the board but leaves the duty of making the assignment in the hands of the county treasurer. *Empire Ranch & Cattle Co. v. Neikirk*, 23 Colo. App. 392, 128 P. 468 (1913).

Board has no power to prefer customers. In fixing a sum less than the face value at which tax certificates may be assigned, the board of county commissioners has no power to prefer purchasers. *Radetsky v. Palmer*, 70 Colo. 146, 199 P. 490 (1921).

Power of board of county commissioners is limited to fixing of price at which each certificate shall be sold and it neither extends to a bulk sale for a lump sum nor to the selection of a particular purchaser. *Bd. of Comm'rs v. Utah-Colorado Land & Livestock Co.*, 101 Colo. 372, 73 P.2d 987 (1937).

Owner of land sold for taxes not entitled to notice of assignment. The rights of an owner of land sold for taxes cannot be affected by mandamus to compel assignment of the certificate of purchase by the county, and there is no reason for giving him notice of such an assignment. *Lackey v. Killey*, 80 Colo. 408, 252 P. 351 (1927).

39-11-121. Municipalities, prior sales validated. All sales of such certificates made by any treasurer or ex officio treasurer of any city, town, or city and county, antecedent to or without the passage of any ordinance prescribing the terms of such sales, are hereby approved, affirmed, ratified, and validated as of their respective dates.

39-11-122. Transfer of certificates by counties. Any county in this state having in its possession or under its control certificates of purchase resulting from the sale of a tax lien on land for the nonpayment of general taxes may assign, sell, or transfer such certificates in such manner, at such times, and on such terms as may be determined by resolution of the board of county commissioners of such county. Thereafter such county shall execute and deliver such instruments as may be necessary fully to convey all of the right, title, and interest of the county in or to such certificates; but no sale of any certificate of purchase issued upon any real estate upon which taxes in excess of ten thousand dollars are then due shall be valid unless and until the sale of said certificate and the terms of said sale are approved by the administrator after notice of said proposed sale and the terms thereof have been published in at least one issue of a newspaper published regularly in the county where said real estate is located, or if no newspaper is published in said county, then by posting notice of said proposed sale and the terms thereof at the county courthouse and two other public places in said county.

Source: L. 64: R&RE, p. 730, § 1. C.R.S. 1963: § 137-11-22. L. 85: Entire section amended, p. 1239, § 15, effective July 1.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Constitutionality. This section does not violate the provisions of § 24 of art. V, Colo. Const., relating to amendments to laws by reference to title only. *District Landowners Trust v. Adams County*, 104 Colo. 146, 89 P.2d 251 (1939).

Purpose of section. To make the authority of the board of county commissioners more definite and certain, and to clarify their position with reference to tax sale certificates, the general assembly enacted this section. *Bennett v. Shotwell*, 118 Colo. 206, 194 P.2d 335 (1948).

Object of sale is to collect revenue. While the purpose of the law in divesting the estate of a landowner, upon sale for delinquent taxes, is to coerce the negligent and unwilling citizen to obey the law by payment of his taxes, the sole object of the state in making the sale is to collect its revenue. *Knutson v. Dickson*, 105 Colo. 42, 94 P.2d 691 (1939).

Recordation of assignment unnecessary. It is not necessary that the assignment of the certificates of purchase be entered upon the records of sale in the office of the county clerk in order to vest complete title thereto in the assignee. *White Cap Mining Co. v. Resurrection Mining Co.*, 115 Colo. 396, 174 P.2d 727 (1946).

No inconsistency or repugnancy exists between this section and § 39-11-120, pertaining

to the disposition of certificates held by the county when taxes thereon are tendered in full; therefore, there is no repeal by either direction or implication. *Knutson v. Dickson*, 105 Colo. 42, 94 P.2d 691 (1939); *RTV, L.L.C. v. Grandote Int'l Ltd.*, 937 P.2d 768 (Colo. App. 1996).

Interplay of this section and § 39-11-120. Section 39-11-120 (4) authorizes the county treasurer to sell any tax certificate for full value without requiring any action by the county commissioners. Only if the amount to be received is less than such full amount does an order by the commissioners become necessary, in which case this section applies. *RTV, L.L.C. v. Grandote Int'l Ltd.*, 937 P.2d 768 (Colo. App. 1996).

Board may name individual purchaser. Under this section, a resolution of a board of county commissioners authorizing the sale of a certificate to a named individual, and not to the first person offering to pay the amount fixed by the board, is valid. *White Cap Mining Co. v. Resurrection Mining Co.*, 115 Colo. 396, 174 P.2d 727 (1946).

The board has the power to fix the price at which individual tax sale certificates of purchase held by the county may be assigned by the treasurer. *Bd. of Comm'rs v. Utah-Colorado Land & Livestock Co.*, 101 Colo. 372, 73 P.2d 987 (1937).

Applied in *McMillan v. Bd. of Comm'rs*, 113 Colo. 387, 157 P.2d 146 (1945).

39-11-123. Transfer of certificates - irrigation or drainage district taxes. Any county in this state having in its possession or under its control certificates of purchase resulting from the sale of a tax lien on land for the nonpayment of irrigation or drainage district taxes or assessments, by agreement with the board of directors of the district involved, may assign, sell, or transfer such certificates as provided in section 39-11-122.

Source: L. 64: R&RE, p. 730, § 1. C.R.S. 1963: § 137-11-23. L. 85: Entire section amended, p. 1239, § 16, effective July 1.

ANNOTATION

Constitutionality. This section does not violate the provisions of § 24 of art. V, Colo. Const., relating to amendments to laws by ref-

erence to title only. District Landowners Trust v. Adams County, 104 Colo. 146, 89 P.2d 251 (1939) (decided under former law).

39-11-124. Counties, prior sales validated. All assignments, sales, or transfers of certificates of purchase by counties made before August 1, 1964, are validated and confirmed.

Source: L. 64: R&RE, p. 730, § 1. C.R.S. 1963: § 137-11-24.

ANNOTATION

Constitutionality. This section does not violate the provisions of § 24 of art. V, Colo. Const., relating to amendments to laws by ref-

erence to title only. District Landowners Trust v. Adams County, 104 Colo. 146, 89 P.2d 251 (1939) (decided under former law).

39-11-125. Disposal of certificates by districts. Any irrigation or drainage district in this state having in its possession or under its control certificates of purchase resulting from the sale of a tax lien on land for the nonpayment of irrigation or drainage district taxes or assessments may assign, sell, or transfer such certificates in such manner, at such times, and on such terms as may be determined by resolution adopted by the board of directors of such district, and thereupon such district shall execute and deliver such instruments as may be necessary fully to convey all of its right, title, and interest in or to such certificates.

Source: L. 64: R&RE, p. 730, § 1. C.R.S. 1963: § 137-11-25. L. 85: Entire section amended, p. 1239, § 17, effective July 1.

39-11-126. Agreement with county commissioners. Any irrigation or drainage district having in its possession or under its control certificates of purchase resulting from the sale of a tax lien on land for the nonpayment of general taxes may, by agreement with the board of county commissioners of the county in which the land is situated, assign, sell, or transfer such certificates as provided in section 39-11-125.

Source: L. 64: R&RE, p. 731, § 1. C.R.S. 1963: § 137-11-26. L. 85: Entire section amended, p. 1240, § 18, effective July 1.

39-11-127. Irrigation or drainage districts, prior sales validated. All assignments, sales, or transfers of certificates of purchase by irrigation or drainage districts made before August 1, 1964, are validated and confirmed.

Source: L. 64: R&RE, p. 731, § 1. C.R.S. 1963: § 137-11-27.

39-11-128. Condition precedent to deed - notice. (1) Before any purchaser, or assignee of such purchaser, of a tax lien on any land, town or city lot, or mining claim sold for taxes or special assessments due either to the state or any county or incorporated town or city within the same at any sale of tax liens for delinquent taxes levied or assessments authorized by law is entitled to a deed for the land, lot, or claim so purchased, he shall make request upon the treasurer, who shall then comply with the following:

(a) The treasurer shall serve or cause to be served, by personal service or by either registered or certified mail, a notice of such purchase on every person in actual possession

or occupancy of such land, lot, or claim, and also on the person in whose name the same was taxed or specially assessed if, upon diligent inquiry, such person can be found in the county or if his residence outside the county is known, and upon all persons having an interest or title of record in or to the same if, upon diligent inquiry, the residence of such persons can be determined, not more than five months nor less than three months before the time of issuance of such deed. In such notice the treasurer shall state when the applicant or his assignor purchased the tax lien on such land, lot, or claim, in whose name such property was taxed, the description of the land, lot, or claim for which a tax lien was purchased, for what year taxed or specially assessed, and when the time of redemption will expire or when the tax deed shall be issued.

(b) In all cases or instances where the valuation for assessment of the property is five hundred dollars or more, the treasurer shall publish such notice, three times, at intervals of one week, in some daily, weekly, or semiweekly newspaper published in such county, not more than five months nor less than three months before the time at which the tax deed may issue, and he shall send by registered or certified mail a copy of such notice to each person not found to be served whose address is known or can be determined upon diligent inquiry. If no such newspaper is published in the county, then said notice shall be published in the newspaper that is published in Colorado nearest the county seat of the county in which such land, lot, or claim is situated. The purchaser or assignee, at the time of making such request for notification on the treasurer, shall pay to the treasurer a fee, as provided in section 30-1-102, C.R.S. The treasurer shall make and carefully preserve among the files of his office a record of all things done in compliance with this section and shall certify to the same.

(2) When request is made for a tax deed to lands situated wholly within the exterior boundary lines of an irrigation district, the holder of tax sale certificates of purchase to such lands may include in one request or demand for a tax deed all contiguous tracts for which he holds such certificates of purchase. When all of such lands for which a tax deed is so requested or demanded are unoccupied and no taxes have been paid thereon, or upon any parcel of such lands embraced in such request or demand, for five consecutive years prior to the making of such request or demand, the only notice which the treasurer shall be required to give of the fact that a request or demand for tax deed has been made upon him shall be a notice of publication as provided in this section, in which as many tracts or parcels of land shall be described as are embraced in any one demand or request for deed.

Source: L. 64: R&RE, p. 731, § 1. C.R.S. 1963: § 137-11-28. L. 71: p. 329, § 11. L. 85: IP(1) and (1)(a) amended, p. 1240, § 19, effective July 1. L. 96: (1)(b) amended, p. 116, § 5, effective March 25.

Cross references: For publication of legal notices generally, see part 1 of article 70 of title 24.

ANNOTATION

- I. General Consideration.
- II. Notice.
 - A. In General.
 - B. Service.

I. GENERAL CONSIDERATION.

Law reviews. For article, "Inadequacy of Notice Provision for Obtaining Treasurers' Deeds", see 25 Dicta 144 (1948). For article, "Property Law", see 32 Dicta 420 (1955). For comment on Mitchell v. Espinosa appearing below, see 25 Rocky Mt. L. Rev. 101 (1952). For article, "Delinquent Oil and Gas Ad Valorem Taxes: Protecting Property Interests", see 16 Colo. Law. 798 (1987).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

The evident purpose of this section and § 39-5-104 is to forbid the issuance of a deed where the property is of substantial value, without giving notice to those interested, and particularly to one having the right of redemption. Bogue v. Miles, 107 Colo. 320, 111 P.2d 1055 (1941); Swofford v. Colo. Nat'l Bank, 628 P.2d 184 (Colo. App. 1981).

The requirements of this section are jurisdictional. Sheesley v. Voorhees, 24 Colo. App. 428, 134 P. 1008 (1913); Brown v. Davis, 103 Colo. 110, 83 P.2d 326 (1938); Siler v. Inv. Sec. Co., 125 Colo. 438, 244 P.2d 877 (1952); Con-

cord Corp. v. Huff, 144 Colo. 72, 355 P.2d 73 (1960); Turkey Creek, LLC v. Rosania, 953 P.2d 1306 (Colo. App. 1998).

There must be full compliance with statutory requirements relating to notice of application for issuance of a treasurer's deed, and, if a noncompliance with any such statutory direction is shown, the treasurer's deed will be adjudged invalid. Siler v. Inv. Sec. Co., 125 Colo. 438, 244 P.2d 877 (1952); Concord Corp. v. Huff, 144 Colo. 72, 355 P.2d 73 (1960).

Tax deed is invalid absent full compliance of statutory requirements relating to the issuance of the deed. Siddoway v. Ainge, 34 Colo. App. 210, 526 P.2d 669 (1974), *aff'd*, 189 Colo. 173, 538 P.2d 110 (1975).

Satisfaction of requirements question of fact. The determination of whether each requirement of this section relating to issuance of tax deeds by county treasurers has been sufficiently satisfied is a question for the trier of fact. Siddoway v. Ainge, 189 Colo. 173, 538 P.2d 110 (1975); Turkey Creek, LLC v. Rosania, 953 P.2d 1306 (Colo. App. 1998).

Deed, although proper, is not evidence of acts necessary. Even though the deed be conceded to be fair on its face so as to make it *prima facie* evidence of facts occurring before or at the time of the sale, it constitutes no evidence of the acts which the cash purchaser is required to perform, or the treasurer for him, after the sale and before a deed can be lawfully executed. Sheesley v. Voorhees, 24 Colo. App. 428, 134 P. 1008 (1913).

Written request for unsigned tax deed immaterial. It is immaterial that a written request for a tax deed is unsigned where demand for the deed was actually made on the treasurer. Sanderford v. Walker Inv. Co., 84 Colo. 203, 269 P. 14 (1928).

Treasurer may issue a correction deed. Where there was some mistake of the county treasurer which made a former deed irregular or defective, a correction deed should be issued. White Cap Mining Co. v. Resurrection Mining Co., 115 Colo. 396, 174 P.2d 727 (1946).

Applied in Johnson v. Cork, 106 Colo. 72, 102 P.2d 471 (1940); Lake Canal Reservoir Co. v. Beeche, 227 P.3d 882 (Colo. 2010).

II. NOTICE.

A. In General.

No tax deed may be issued until notice is given. Notice to all persons having an interest or title of record to land sold for taxes is a prerequisite to the issuance of a tax deed therefor. French v. Golston, 105 Colo. 578, 100 P.2d 581 (1940).

Parties claiming tax title must prove notice. It is incumbent upon the parties claiming title under a tax deed to prove either that the statu-

tory notice was given or that the assessed valuation rendered it unnecessary to give such notice before the deed would be admissible in evidence. Jackson v. Larson, 24 Colo. App. 548, 136 P. 81 (1913).

Title void. Under this section, proof of notice is necessary, and the notice must state the truth, failing in which, the deed will be void. Young v. Rohan, 77 Colo. 70, 234 P. 694 (1925); Staples v. Todd, 108 Colo. 386, 117 P.2d 1005 (1941); Tewell v. Galbraith, 119 Colo. 412, 205 P.2d 229 (1949).

Tax deed not void for issuance after date in notice. A tax deed is not void for the reason that it is executed and issued after the date fixed by the notice for issuance of the treasurer's deed. Mitchell v. Espinosa, 125 Colo. 267, 243 P.2d 412 (1952).

For when notice is false and defective, see Bottom v. Young, 52 Colo. 533, 125 P. 500 (1912); Flader v. Campbell, 120 Colo. 66, 207 P.2d 1188 (1949).

Where party contesting issuance of tax deed had actual notice and the opportunity to redeem the tax certificates prior to the tax deeds being issued and did not avail himself of such opportunity, such party has not demonstrated any injury to his right to notice under this section. Turkey Creek, LLC v. Rosania, 953 P.2d 1306 (Colo. App. 1998).

Despite alleged defects and the failure to follow strictly the publication requirements, party contesting the issuance of tax deeds lacks standing to contest the validity of the tax deeds under either paragraph (a) or (b) of subsection (1). Turkey Creek, LLC v. Rosania, 953 P.2d 1306 (Colo. App. 1998).

B. Service.

Treasurer's duty to serve notice. This section makes it the duty of the treasurer to serve the notice or cause it to be served. Richardson v. Halbekann, 97 Colo. 175, 48 P.2d 1014 (1935).

This section contemplates that service is complete when the county treasurer registers and deposits in the United States mails the statutory notice directed to the proper postoffice address of the party to be notified. Ford v. Genereux, 104 Colo. 17, 87 P.2d 749 (1939).

Publication required only when actual notice not possible. The evident intent of the general assembly was to require publication only in the event that actual notice cannot be given to the owner and to persons having an interest of record in the land. Henrie v. Greenlees, 71 Colo. 528, 208 P. 468 (1922).

Notice by publication was sufficient where the record interest holder's correct address was not available in the county records. Schmidt v. Langel, 874 P.2d 447 (Colo. App. 1993).

Service on general partner imputes notice to the limited partners. Because the general

partner had authority to act for the limited partnership and received appropriate notice of the sale and application for deed, the general partner's notice and knowledge are imputed to each limited partner. *BMS P'ship v. Winter Park Devil's Thumb Inv. Co.*, 910 P.2d 61 (Colo. App. 1995), *aff'd* on other grounds, 926 P.2d 1253 (Colo. 1996).

Limited partner not entitled to notice of time for issuance of tax deed because limited partner does not own an interest in real property owned by the limited partnership. *Winter Park Devil's Thumb Inv. Co. v. BMS P'ship*, 926 P.2d 1253 (Colo. 1996).

A tenant occupying the premises must be served with notice, and service on the record owner, without service on the tenant in possession, is not a compliance with subsection (1)(a). *Brown v. Davis*, 103 Colo. 110, 83 P.2d 326 (1938); *Taylor v. Lutin*, 106 Colo. 170, 102 P.2d 484 (1940).

"Persons having an interest or title of record". "Persons having an interest or title of record", referred to in subsection (1)(a), is equivalent to "record owners", and that language is held to exclude even holders of known but unrecorded contracts of sale. *Godfrít v. Judd*, 116 Colo. 489, 182 P.2d 907 (1947).

Failure to serve notice to record owner invalidates deed. Where a diligent inquiry of the records of the clerk and recorder of the county by the treasurer or by the purchaser under a treasurer's deed would have disclosed that a bank had an interest of record in the property and, since the bank was entitled to be served with notice by the treasurer under this section, where the bank did not receive such notice, the treasurer's deed was invalid. *Swofford v. Colo. Nat'l Bank*, 628 P.2d 184 (Colo. App. 1981).

The original beneficiaries of a note and deed of trust secured by real property, who subsequently transferred the note and deed to a bank as security for indebtedness by an agreement purporting to assign all right, title, and interest in the deed, did not retain an interest in the real property sufficient to warrant notice of pending issuance of a treasurer's deed. *Columbus Invs. v. Lewis*, 48 P.3d 1222 (Colo. 2002).

Section does not contemplate service on wife. The requirement of subsection (1)(a) that the county treasurer shall serve "notice of such purchase" on every person in actual possession of the land does not necessitate service on a wife living with her husband and occupying the premises involved. *Ford v. Genereux*, 104 Colo. 17, 87 P.2d 749 (1939).

This section directs the treasurer to make diligent inquiry to learn the address of the record owner and serve notice upon him at that address if it can be learned. *Bald Eagle Mining & Ref. Co. v. Brunton*, 165 Colo. 28, 437 P.2d 59 (1968).

This section imposes a duty of diligent inquiry upon the county treasurer. *Siddoway v. Ainge*, 34 Colo. App. 210, 526 P.2d 669 (1974), *aff'd*, 189 Colo. 173, 538 P.2d 110 (1975).

Treasurer held to have not acted with diligence in failing to determine address of record owners prior to issuing a tax deed. *Parkinson v. Burley*, 667 P.2d 780 (Colo. App. 1983).

Deed is void absent diligent inquiry. Where, upon application to a county treasurer for issuance of a treasurer's deed, no "diligent inquiry", required by subsection (1)(a), is made by that official to ascertain the address of the person in whose name the property sold for taxes was taxed, and such "diligent inquiry" would have disclosed the correct address of the owner, and where no notice of application for the tax deed was served upon or received by the owner because of the failure of the official to make "diligent inquiry", and where no statute of limitations is involved, the treasurer's deed will be voided upon the complaint of the owner who thus was deprived of notice concerning the application for issuance of the treasurer's deed. *Siler v. Inv. Sec. Co.*, 125 Colo. 438, 244 P.2d 877 (1952); *Witte myer v. Cole*, 689 P.2d 720 (Colo. App. 1984).

Diligent inquiry not extended to matters unrelated to subject property. The requirement of diligent inquiry by the treasurer to determine the proper address of record owner of property subject to tax sale does not extend to a search of the treasurer's files for miscellaneous correspondence between the treasurer and owner in matters unrelated to the subject property. *Siddoway v. Ainge*, 34 Colo. App. 210, 526 P.2d 669 (1974), *aff'd*, 189 Colo. 173, 538 P.2d 110 (1975).

Treasurer need not check records of secretary of state to be diligent. To constitute diligent inquiry upon the part of the county treasurer, he was not obliged to go to the records in the office of the secretary of state to ascertain the address of the corporation in whose name the property was taxed or its officers. *White Cap Mining Co. v. Resurrection Mining Co.*, 115 Colo. 396, 174 P.2d 727 (1946).

Failure of record owner to report change of address irrelevant. Failure of the record owner to advise the county assessor's office regarding his change of address is not relevant in determining whether county treasurer complied with his duty under this statute to make a diligent inquiry. *Siddoway v. Ainge*, 34 Colo. App. 210, 526 P.2d 669 (1974), *aff'd*, 189 Colo. 173, 538 P.2d 110 (1975).

Treasurer cannot be required to search for current address. The county treasurer cannot be held to a standard requiring him to be familiar with the current addresses of delinquent property tax payers, or to search his correspondence files to ascertain such current addresses, especially where the treasurer was not put on

notice that the address in his records was incorrect. *Siddoway v. Ainge*, 189 Colo. 173, 538 P.2d 110 (1975).

Treasurer cannot blindly rely on assessor's rolls for correct address. Blind reliance on erroneous assessor's rolls, when the correct address was easily available to the treasurer, does not satisfy the diligence requirements of subsection (1)(a), nor does it permit forfeiture of property when the owner of the property does not receive notice of the impending forfeiture because of the lack of diligent inquiry on the part of the treasurer. *Bald Eagle Mining & Ref. Co. v. Brunton*, 165 Colo. 28, 437 P.2d 59 (1968).

"Diligent inquiry" requires the county treasurer to inquire into information available within county records, but the county treasurer need not inquire into every possible source for the record interest holder's correct address. As a matter of law, the treasurer exercised due diligence by reexamining the county records for an alternative address when the original notice was returned. *Schmidt v. Langel*, 874 P.2d 447 (Colo. App. 1993).

For nonrecord owners who are not in possession, see *DeCola v. Bochatey*, 161 Colo. 95, 420 P.2d 395 (1966); *Ponzio v. Arapahoe Inv. Enter.*, 161 Colo. 102, 420 P.2d 398 (1966).

39-11-129. Tax deed - issuance, execution, requirements. The words "issue", "issued", "execute", and "executed" when used in this article in connection with a treasurer's deed mean the signing of such a deed by the treasurer, and the delay in the acknowledgment of such a deed or the delivery thereof shall not in any way affect the validity of such deed. If the notice required in section 39-11-128 for a deed is prepared subsequent to three years after the date of sale of a tax lien for delinquent taxes, it shall not be necessary to make any statement in such notice concerning the time of expiration of the period of redemption. The treasurer may sign such treasurer's deed at any time after the time specified therefor in such notice if no redemption has then been made, if the signing of such deed is within five months from the service of said notice as required in section 39-11-128.

Source: L. 64: R&RE, p. 732, § 1. C.R.S. 1963: § 137-11-29. L. 85: Entire section amended, p. 1240, § 20, effective July 1.

39-11-130. Fees included in redemption money. In case the treasurer is compelled to serve or to publish such notices in a newspaper, then before any person who may have a right to redeem such land or lot from such tax sale is permitted to redeem, he shall pay the officer or person who by law is authorized to receive such redemption money the entire amount paid by the applicant for a tax deed for such notices, for abstract and search fees, and for the cost of publishing such notices for the use of the person compelled to pay such charges. If the property therein described is redeemed before the expiration of the period of redemption named in such notice, the purchaser or his assigns shall recover, in addition to his interest and costs, the cost of such publication and the abstract and search fee.

Source: L. 64: R&RE, p. 732, § 1. C.R.S. 1963: § 137-11-30. L. 85: Entire section amended, p. 1241, § 21, effective July 1.

39-11-131. Notice of application for deed. Any number of tracts or parcels of land not exceeding twenty-five, whether contiguous or noncontiguous, or whether claimed or held under one or more titles or ownerships, or whether included in an irrigation district or not so included, and although tax liens for such tracts or parcels of land were separately sold at the tax sale or covered by more than one tax sale certificate, may be included and described in one notice of application for tax deed provided for in section 39-11-128. Such tracts or parcels, not exceeding twenty-five in number, may also be included and described in a single request for tax deed if such notice and the service thereof and such request are in conformity with section 39-11-128 in other respects. The name of the person in whose name the land for which a tax lien was sold was taxed or specially assessed for the year for which the tax lien was sold shall be prominently displayed in said notice at or near the beginning thereof and near or with a reference to the number of the tax sale certificate and the description of the land involved, sufficient to enable identification of the land with the name of the person assessed if all certificates so sought to be included in a single notice or request are held by but one person, or jointly held by more than one person.

Source: L. 64: R&RE, p. 733, § 1. **C.R.S. 1963:** § 137-11-31. **L. 85:** Entire section amended, p. 1241, § 22, effective July 1.

39-11-132. Prior notices or requests containing more than one parcel - validation. (Repealed)

Source: L. 64: R&RE, p. 733, § 1. **C.R.S. 1963:** § 137-11-32. **L. 75:** Entire section repealed, p. 1480, § 8, effective July 1.

39-11-133. Suit to quiet title. Suit to quiet title or to try title may be maintained by the grantee or his successors for all or any one or more of the parcels or tracts acquired under tax deed issued pursuant to said notices and requests, and it shall not be a defense or ground of objection to such action that there is a misjoinder of parties or causes of action; but if a defense to such action or a counterclaim is interposed by a claimant to one or more of said parcels, less than all, then the action shall be tried as between the plaintiff and such claimant, separately from the suit as to other parties and other parcels.

Source: L. 64: R&RE, p. 733, § 1. **C.R.S. 1963:** § 137-11-33.

39-11-134. Defects in tax deed, effect. Invalidities or defects in or concerning one or more tax deeds, titles, or certificates, or in proceedings relating thereto, shall have no effect on other deeds, titles, or certificates, and redemption from one or more sales shall be without effect as to other sales, titles, or certificates; and, in case of redemption from one or more sales, the treasurer shall compute and collect a fair proportion, as nearly as may be, of the costs, fees, and charges required by law to be paid on redemption from tax sales.

Source: L. 64: R&RE, p. 734, § 1. **C.R.S. 1963:** § 137-11-34.

39-11-135. Form of tax deed. Deeds executed by the treasurer under the provisions of this article shall be substantially in the following form:

Know all men by these presents, that, whereas, the following described real property, viz: (description of property taxed), situated in the county of, and state of Colorado, was subject to taxation for the year (or years) A.D. 20....;

And, whereas, the taxes assessed upon said property for the year (or years) aforesaid remained due and unpaid at the date of the sale hereinafter named; and, whereas, the treasurer of the said county did, on the day of, A.D. 20...., by virtue of the authority vested in him by law, at the sale begun and publicly held on the day of, A.D. 20...., expose to public sale at the office of the treasurer, in the county aforesaid, in substantial conformity with the requirements of the statute in such case made and provided, the tax lien on the real property above described for the payment of the taxes, delinquent interest, and costs then due and remaining unpaid on said property;

And, whereas, at the time and place aforesaid, of the county of and of bid on the tax lien on all of the above described property the sum of dollars and cents, being the whole amount of taxes, delinquent interest, and costs then due and remaining unpaid upon said property for that year, and the said having offered in his said bid to pay the sum of dollars and cents in excess of said taxes, delinquent interest, and costs, and the said bid being the largest amount which any person offered to pay in excess of the said taxes, delinquent interest, and costs so due upon said property for that year (or those years), and payment of the said sum having been made by him to the said treasurer, the said tax lien on such property was stricken off to him at that price;

And, whereas, the said did, on the day of, A.D. 20...., duly assign the certificate of the sale of the tax lien on the property as aforesaid, and all his rights,

title, and interest in said property, to of the county of, and of

And, whereas, at the sale so held as aforesaid by the treasurer, no bids were offered or made by any person or persons for the tax lien on said property, and no person or persons having offered to pay the said taxes, delinquent interest, and costs upon the said property for that year, and the treasurer having become satisfied that no sale of the tax lien on said property could be had, therefore the said tax lien on said property was, by the then treasurer of the said county, stricken off to the said county, and a certificate of sale was duly issued therefor to the said county in accordance with the statute in such case made and provided;

And, whereas, the said county, acting by and through its treasurer, and in conformity with the order of the board of county commissioners of the said county, duly entered of record on the day of, A.D. 20.... (the said day being one of the days of a regular session of the board of county commissioners of said county), did duly assign the certificate of sale of the tax lien on said property, so issued as aforesaid to said county, and all its rights, title, and interest in said property held by virtue of said sale;

And, whereas, the said (or) has paid subsequent taxes on said property to the amount of dollars and cents;

And, whereas, more than three years have elapsed since the date of the said sale, and the said property has not been redeemed therefrom as provided by law;

And, whereas, the said property was valued for assessment for that year at the amount of

And, whereas, all the provisions of the statutes prescribing prerequisites to obtaining tax deeds have been fully complied with, and are now of record, and filed in the office of the treasurer of said county;

Now, therefore, I,, treasurer of the county aforesaid, for and in consideration of the sum to the treasurer paid as aforesaid, and by virtue of the statute in such case made and provided, have granted, bargained, and sold, and by these presents do grant, bargain, and sell the above and foregoing described real estate unto the said (or), his heirs and assigns, forever, subject to all the rights of redemption by minors, or incompetent persons, as provided by law.

In witness whereof, I,, treasurer as aforesaid, by virtue of the authority aforesaid, have hereunto set my hand and seal this day of, A.D. 20....

(Seal) _____ Treasurer

STATE OF COLORADO)
) ss.
County of)

The foregoing instrument was acknowledged before me this day of, 20...., by as treasurer of said county.

Witness my hand and official seal. (If notary public, state date commission expires).

(Seal)

Title of Officer

Source: L. 64: R&RE, p. 734, § 1. C.R.S. 1963: § 137-11-35. L. 69: p. 1124, § 1. L. 85: Entire section amended, p. 1241, § 23, effective July 1. L. 92: Entire section amended, p. 2232, § 23, effective April 9.

ANNOTATION

- I. General Consideration.
- II. Necessary Recitals in Deed.
- III. Defects Voiding Deed on Its Face.
- IV. Deed Conveying Several Tracts.

I. GENERAL CONSIDERATION.

Law reviews. For note, "Tax Deeds in Colorado", see 18 Rocky Mt. L. Rev. 393 (1946).

Annotator's note. The following annotations include cases decided under this section as it existed prior to its 1964 repeal and reenactment.

General assembly has the authority to prescribe a tax deed's form and requisites. Sayre v. Sage, 47 Colo. 559, 108 P. 160 (1910); Minter v. King, 27 Colo. App. 233, 148 P. 275 (1915).

Treasurer must comply with statutory provisions. A treasurer, in executing deeds, acts under a naked statutory power, and he must comply substantially with the applicable statutory provisions. The form of a treasurer's deed is a special one, and it will not be assumed that the general assembly intended to modify it in any way by subsequent statute, unless the intention to do so clearly appears. Colpitts v. Fastenau, 117 Colo. 594, 192 P.2d 524 (1948).

Treasurer's affidavit prerequisite to valid tax deed. An affidavit of the treasurer, in substantial compliance with § 39-11-103, is a prerequisite to a valid tax deed. Norris v. Kelsey, 23 Colo. App. 555, 130 P. 1088 (1913).

Tax deed must be according to form. In order to give color of title, the instrument of conveyance must at least be good in point of form, profess to convey the title, and be properly and duly executed. Dussart v. Abdo Mercantile Co., 57 Colo. 423, 140 P. 806 (1914).

The form of a deed prescribed for cash purchasers should be substantially followed as far as its terms are applicable to the county as a bidder, and it should be varied only so far as may be necessary to show the truth of the transaction in substance. Dyke v. Whyte, 17 Colo. 296, 29 P. 128 (1892).

Controlling date as to when deed becomes effective is the date of delivery. Sanderford v. Walker Inv. Co., 84 Colo. 203, 269 P. 14 (1928).

Applied in United States Sec. & Bond Co. v. Wolfe, 27 Colo. 218, 60 P. 637 (1900); Carnahan v. Sieber Cattle Co., 34 Colo. 257, 82 P. 592 (1905); Bryant v. Miller, 48 Colo. 192, 109 P. 959 (1910); Knoch v. County of Mesa, 159 Colo. 241, 411 P.2d 1 (1966).

II. NECESSARY RECITALS IN DEED.

No title acquired to improvements unless described in tax deed. Where tax deeds do not

describe improvements or the land to which they are incident, the holders of the deeds acquire no title to such improvements. Smith v. Highland Mary Mining, Milling & Power Co., 82 Colo. 288, 259 P. 1025 (1927).

Deed containing proper recitals is prima facie evidence as to legal prerequisites. Richardson v. Halbekann, 97 Colo. 175, 48 P.2d 1014 (1935); Walter v. Harrison, 101 Colo. 14, 70 P.2d 335 (1937); White Cap Mining Co. v. Resurrection Mining Co., 115 Colo. 396, 174 P.2d 727 (1946); Grusing v. Parke, 120 Colo. 555, 212 P.2d 102 (1949).

The recitals in a tax deed must generally be taken as true in the absence of evidence to the contrary. Shaw v. Pioneer State Bank, 81 Colo. 528, 256 P. 636 (1927).

Statutory tax deed fair on face. A tax deed in statutory form, containing no affirmative recitals which state that the prerequisites to obtaining it have been complied with, is fair and not void on its face. North Am. Realty Co. v. Brady, 77 Colo. 56, 234 P. 1054 (1925).

Recitals in correcting deed prevail over former recitals. Positive affirmative recitals in a correcting tax deed must prevail over former recitals in an invalid first deed. Shaw v. Pioneer State Bank, 81 Colo. 528, 256 P. 636 (1927).

III. DEFECTS VOIDING DEED ON ITS FACE.

Deed showing that sale was in violation of a positive statute is void. Gomer v. Chaffee, 6 Colo. 314 (1882); Knowles v. Martin, 20 Colo. 393, 38 P. 467 (1894).

Deed showing incorrect location of sale is void. A deed which shows upon its face that the sale was held at a place other than that designated by statute is void. Crisman v. Johnson, 23 Colo. 264, 47 P. 296, 58 Am. St. R. 224 (1896).

Deed failing to state amount of subsequent taxes paid by assignee. A tax deed based upon a sale to the county and a subsequent assignment of the certificate, which fails to state the amount of taxes assessed on the land subsequent to the date of the certificate and which fails to state the amount of subsequent taxes paid by the assignee is void upon its face. Empire Ranch & Cattle Co. v. Neikirk, 23 Colo. App. 392, 128 P. 468 (1897); Empire Ranch & Cattle Co. v. Gibson, 23 Colo. App. 399, 128 P. 472 (1913).

Failure to recite date of transfer of county tax certificate renders deed void. The failure of a tax deed based upon a tax certificate originally issued to the county under § 39-11-108

and assigned by the county to the grantee in the tax deed to recite the date and manner of the transfer of the certificate renders the deed void on its face. *Empire Ranch & Cattle Co. v. Neikirk*, 23 Colo. App. 392, 128 P. 468 (1913).

Deed failing to show name of officer assigning certificate void. A deed showing a sale to the county and an assignment of the certificate of purchase by the county, "by its proper officers", but not showing by name or official title what officer made the assignment, is void upon its face. *Poage v. E. H. Rollins & Sons*, 24 Colo. App. 537, 135 P. 990 (1913); *Emerson v. Valdez*, 24 Colo. App. 458, 135 P. 137 (1913).

Deed showing county as purchaser on first day of sale void. A deed which shows that the land was sold to the county on the first day of the sale is void on its face. *Dussart v. Abdo Mercantile Co.*, 57 Colo. 423, 140 P. 806 (1914).

Tax deed showing a wrong date is void on its face. *Hamer v. Glenn Inv. Co.*, 75 Colo. 423, 226 P. 299 (1924).

Evidence aliunde not admissible to contradict recitals of deed void on its face. Evidence aliunde, for the purpose of showing that all preliminary steps up to the time of the tax sale were valid in all respects, was not admissible to contradict and vary the positive recitals of the tax deeds which make them void on their face, although, in a suit to reform such tax deeds so as to speak the truth, it might have been admitted and become sufficient with other evidence to authorize a court of equity to decree the reformation.

Emerson v. Valdez, 24 Colo. App. 458, 135 P. 137 (1913); *Poage v. E. H. Rollins & Sons*, 24 Colo. App. 537, 135 P. 990 (1913).

If extraneous evidence is necessary to show illegality, deed is not void on its face. *North Am. Realty Co. v. Brady*, 77 Colo. 56, 234 P. 1054 (1925).

Tax deed void on its face cannot set statute of limitations in motion. *Jackson v. Larson*, 24 Colo. App. 548, 136 P. 81 (1913).

IV. DEED CONVEYING SEVERAL TRACTS.

Tax deed is not objectionable because it conveys several contiguous tracts of land. *Barnett v. Jaynes*, 26 Colo. 279, 57 P. 703 (1899).

Where a tax deed conveys title to several tracts of land, and the deeds show that they were advertized separately and that the purchasers bid for them separately, this is sufficient to show that they were sold separately. *Waddingham v. Dickson*, 17 Colo. 223, 29 P. 177 (1892); *Barnett v. Jaynes*, 26 Colo. 279, 57 P. 703 (1899).

Selling noncontiguous tracts en masse for gross sum voids deed. A tax deed is void on its face, where it shows that noncontiguous tracts of land were sold en masse for a gross sum. *Norris v. Kelsey*, 23 Colo. App. 555, 130 P. 1088 (1913).

39-11-136. Treasurer to execute deed - effect. (1) The deed shall be signed by the treasurer in his official capacity and when so signed shall vest in the purchaser all the right, title, interest, and estate of the former owner in and to the land conveyed and also all right, title, interest, and claim of the state and county thereto. Such deed may be acknowledged in the same manner as other deeds to real estate and, if so acknowledged and recorded in the proper county, shall be prima facie evidence of the following facts:

(a) That the real property conveyed was subject to taxation for the year or years stated in the deed;

(b) That the taxes were not paid at any time before the sale;

(c) That the real property conveyed had not been redeemed from the sale at the date of the deed;

(d) That the property had been listed and assessed at the time and in the manner required by law;

(e) That the taxes were levied according to law;

(f) That the tax lien on said property was advertised for sale in the manner and for the length of time required by law;

(g) That the tax lien on said property was sold for delinquent taxes as stated in the deed;

(h) That the grantee named in the deed was the purchaser, or the heir at law, or the assignee of such purchaser;

(i) That the sale was conducted in the manner required by law;

(j) That the deed was properly signed, acknowledged, and delivered by the treasurer.

(2) All the right, title, interest, and estate conveyed by any such deed executed before August 1, 1964, by the treasurer shall be deemed to have vested in the purchaser at the time such deed was signed by the treasurer in his official capacity.

(3) Execution of a deed pursuant to this section shall not affect the existence of any

public or private roads, rights-of-way, conservation easements, other easements, or equitable servitudes that run with land and have both benefits and burdens, all as claimed or existing prior to the execution of such deed.

Source: L. 64: R&RE, p. 736, § 1. C.R.S. 1963: § 137-11-36. L. 85: (1)(f) and (1)(g) amended, p. 1243, § 24, effective July 1. L. 93: (3) added, p. 305, § 4, effective April 7. L. 2001: (3) amended, p. 10, § 1, effective August 8; (3) amended, p. 308, § 1, effective August 8.

Editor's note: Amendments to subsection (3) by House Bill 01-1082 and House Bill 01-1321 were harmonized.

ANNOTATION

- I. General Consideration.
- II. Deed as Prima Facie Evidence.
- III. Burden of Proving Tax Deed Invalid.

I. GENERAL CONSIDERATION.

Law reviews. For note, "The Effect of a General Tax Sale on the Special Assessment Lien", see 20 Rocky Mt. L. Rev. 288 (1948). For note, "The Effect of Tax Titles Upon Easements and Restrictions Upon the Use of Land in Colorado", see 33 Dicta 228 (1956). For article, "The Tax Deed — Modern Movement Towards Respectability", see 34 Rocky Mt. L. Rev. 181 (1962).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Valid tax deed extinguishes all previous encumbrances. *Sherman v. Greeley Bldg. & Loan Ass'n*, 66 Colo. 288, 181 P. 975 (1919); *Sanderford v. Walker Inv. Co.*, 84 Colo. 203, 269 P. 14 (1928); *Benedict v. Coriolanus Corp.*, 30 Colo. App. 306, 491 P.2d 985 (1971).

Title by adverse possession vanishes when treasurer issues deed for unpaid taxes. *Linville v. Russell*, 168 Colo. 459, 452 P.2d 18 (1969).

Unless claim of adverse possession asserted prior to issuance of treasurer's deed. Where claims to ownership of real property based upon adverse possession are asserted in a judicial proceeding to quiet title prior to the issuance of the treasurer's deed and payment of taxes has been tendered, the policy considerations compelling application of the absolute rule that title by adverse possession vanishes upon issuance of a treasurer's deed do not apply. *First Nat'l Bank v. Fitzpatrick*, 624 P.2d 927 (Colo. App. 1981).

Omission of inked scroll around word "seal" of no import. Where there appears next to the county treasurer's signature, the printed word "seal", encircled by a printed scroll, the omission of an inked scroll on the deed has no legal import. *Linville v. Russell*, 168 Colo. 459, 452 P.2d 18 (1969).

Tax deed cannot pass title to previously severed mineral rights. A tax deed does not

pass title to oil and mineral rights which have previously been severed from the surface and on which no proper assessment has been made. *Mitchell v. Espinosa*, 125 Colo. 267, 243 P.2d 412 (1952).

Purchaser with general tax deed entitled to maintain action. A purchaser of lands at a tax sale, having obtained the treasurer's deed, may maintain a bill against one holding a certificate of the sale of the same premises for the nonpayment of a special tax, which was invalidated by the sale for the general tax. *City & County of Denver v. Keller*, 48 Colo. 54, 108 P. 998 (1910).

Showing of substantial compliance required. A party asserting a claim to lands under tax proceedings must show at least substantial compliance with this article. *McPherrin v. Paul*, 21 Colo. App. 154, 120 P. 1051 (1912).

Defects in tax deed must be alleged in pleadings. Defects in a tax deed good on its face cannot be shown in the trial unless they have been pointed out in the pleadings; but it is not necessary that this be done in any particular manner or exclusively by the party relying on the defects. It is sufficient if it clearly appears from the pleadings that certain defects are relied upon and an issue is made as to their existence. *Scott v. Watkins*, 61 Colo. 244, 157 P. 3 (1916).

Sale without proper notice invalid although deed executed and recorded. Among other prerequisites to a valid sale of land for taxes is the giving of notice thereof, and, when it is shown that such notice has not been given in substantial conformity with this article, the sale will be adjudged invalid notwithstanding a tax deed in proper form may have been duly executed and recorded. *Morris v. St. Louis Nat'l Bank*, 17 Colo. 231, 29 P. 802 (1892); *Paine v. Palmberg*, 20 Colo. App. 432, 79 P. 330 (1905).

Claimant under invalid tax deed may assert right of reimbursement. One claiming title under an invalid tax deed may assert the right to reimbursement for taxes paid as against the holder of the regular title from the government, but a subsequent valid tax deed cuts off the right. *Young v. Rohan*, 77 Colo. 70, 234 P. 694 (1925).

Only when a deed issues does a tax lien purchaser acquire all right, title, interest, and estate of the former owner in the land conveyed. *Hughey v. Jefferson County Bd. of Comm'rs*, 921 P.2d 76 (Colo. App. 1996).

Applied in *United States Sec. & Bond Co. v. Wolfe*, 27 Colo. 218, 60 P. 637 (1900); *Lovelace v. Tabor Mines & Mills Co.*, 29 Colo. 62, 66 P. 892 (1901); *Richard v. Beggs*, 31 Colo. 186, 72 P. 1077 (1903); *Imperial Sec. Co. v. Morris*, 57 Colo. 194, 141 P. 1160 (1914); *Hamer v. Glenn Inv. Co.*, 75 Colo. 423, 226 P. 299 (1924); *Pyles v. Portland Gold Mining Co.*, 76 Colo. 598, 233 P. 618 (1925); *City & County of Denver v. Bach*, 92 Colo. 594, 22 P.2d 1114 (1933).

II. DEED AS PRIMA FACIE EVIDENCE.

Deed prima facie evidence of facts occurring before or at time of sale. The things of which the tax deed is made prima facie evidence relate to facts which occurred before or at the time of the sale and not to acts which the cash purchaser is required to perform subsequent to the sale and as a further condition precedent to his right to a deed. *Carnahan v. Sieber Cattle Co.*, 34 Colo. 257, 82 P. 592 (1905); *Sternberger v. Moffat*, 44 Colo. 520, 99 P. 560 (1908); *Pelton v. Muntzing*, 24 Colo. App. 1, 131 P. 281 (1913).

Tax deed is evidence only of matters declared so by this section. The party relying upon a tax deed as evidence must still show the assessed value of the land, that the notice required by § 39-11-131 was given, whether the land was vacant or occupied, and, if occupied, that notice was given to the occupant as well as to all other persons specified in the statute. *Mitchell v. Trowbridge*, 47 Colo. 6, 105 P. 878 (1909).

Deed prima facie evidence of title conveyed. It is apparent that it was the intention of the general assembly to provide that, when a duly executed and recorded tax deed shows that the statutory requirements for the assessment and collection of taxes have been substantially complied with, the deed shall be prima facie evidence of title to the property, thereby conveyed in favor of the purchaser, his heirs, and assigns, as against the former owner. *Dyke v. Whyte*, 17 Colo. 296, 29 P. 128 (1892); *Bennett v. Shotwell*, 118 Colo. 206, 194 P.2d 335 (1948); *Rock v. Fastenau*, 122 Colo. 41, 219 P.2d 781 (1950); *Bald Eagle Mining & Ref. Co. v. Brunton*, 165 Colo. 28, 437 P.2d 59 (1968).

Evidence that property subject to taxation. A tax deed is prima facie evidence, as provided

in subsection (1)(a), that the property described therein was subject to taxation, and the introduction into evidence of a tax deed establishes a prima facie title in the grantee. *Mitchell v. City of Denver*, 33 Colo. 37, 78 P. 686 (1904).

Deed not prima facie evidence that subsequent taxes paid. The form of the deed prescribed by § 39-11-135 contains a recital that subsequent taxes were paid. Subsection (1) of this section does not make the deed prima facie evidence of that fact, but clearly the statutory recital must be given that effect. *Richardson v. Halbekann*, 97 Colo. 175, 48 P.2d 1014 (1935).

Unexecuted deed not evidence of anything. A tax deed not executed as required by this section is not prima facie evidence of anything. *Eaches v. Johnston*, 46 Colo. 457, 104 P. 940 (1909).

Officials' inability to remember procedure followed insufficient to overcome recitals. Evidence that officials are unable to remember the precise procedure they followed is insufficient to overcome the effect of their own recitals in the affidavits and the deed itself. *Bald Eagle Mining & Ref. Co. v. Brunton*, 165 Colo. 28, 437 P.2d 59 (1968).

Executing and recording of deeds as provided by this section. *Morris v. St. Louis Nat'l Bank*, 17 Colo. 231, 29 P. 802 (1892).

III. BURDEN OF PROVING TAX DEED INVALID.

Presumption of regularity rebuttable. The treasurer's deed is prima facie evidence of the regularity of the proceedings, but the presumption of regularity raised is a rebuttable one; when evidence is presented which shows that the proceedings did not follow the statutory requirements, the deed must be set aside. *Bald Eagle Mining & Ref. Co. v. Brunton*, 165 Colo. 28, 437 P.2d 59 (1968); *Arabasz v. Schwartzberg*, 943 P.2d 463 (Colo. App. 1996).

Claimant under title must prove preliminary steps to sale. A party claiming under a tax title has the burden of proving the preliminary steps leading up to the sale. *Scott v. Watkins*, 61 Colo. 244, 157 P. 3 (1916).

Burden of overthrowing deed upon adverse claimant. The burden of overthrowing a tax deed, regular in form, is upon the party claiming adversely thereto. *Waddingham v. Dickson*, 17 Colo. 223, 29 P. 177 (1892); *Knight v. Boring*, 38 Colo. 153, 87 P. 1078 (1906); *Grusing v. Parke*, 120 Colo. 555, 212 P.2d 102 (1949).

39-11-137. Validation of acknowledgments of tax deeds. Any tax deed executed by a treasurer pursuant to section 39-11-135, if acknowledged in conformity with the provisions of section 38-35-101, C.R.S., shall be considered for all purposes as having been properly acknowledged, and such acknowledgment shall carry with it the presumptions provided for by section 38-35-101, C.R.S.

Source: L. 64: R&RE, p. 737, § 1. C.R.S. 1963: § 137-11-37.

ANNOTATION

Law reviews. For article, "Curative Statutes of Colorado Respecting Titles to Real Estate", see 26 Dicta 281 (1949).

39-11-138. When successor of treasurer shall act. If any treasurer dies, resigns, or is removed from office or his term of office expires after selling any tax liens on any real estate for delinquent taxes and before executing a certificate or deed for the same, his successor in office shall execute such certificate or deed in the same manner that the treasurer making such sale might have done.

Source: L. 64: R&RE, p. 737, § 1. C.R.S. 1963: § 137-11-38. L. 85: Entire section amended, p. 1243, § 25, effective July 1.

39-11-139. Posting list of tax sale certificates and tax deeds. No later than the fifteenth day of January of each year, each county treasurer shall deliver to the county clerk and recorder of the county treasurer's county a list showing all tax certificates theretofore issued and held in the name of the county and a list of all property the title to which has been acquired by the county through issuance of a tax deed. A copy of such lists shall be posted in a conspicuous place in the courthouse for not less than thirty days.

Source: L. 67: p. 803, § 5. C.R.S. 1963: § 137-11-49. L. 93: Entire section amended, p. 440, § 8, effective July 1.

39-11-140. Tax deed recorded - entry. When any tax deed is filed for record, the county clerk and recorder shall also enter the name of the grantee in the proper column of his record of land for which a tax lien was sold for delinquent taxes.

Source: L. 64: R&RE, p. 737, § 1. C.R.S. 1963: § 137-11-39. L. 85: Entire section amended, p. 1243, § 26, effective July 1.

39-11-141. Action to determine validity of certificates. Whenever any county or city and county in this state holds tax sale certificates which are believed by the board of county commissioners to be void for irregularity in the assessment of property or sale of a tax lien on property or otherwise, the board of county commissioners of the county or city and county may institute an action in the district court of the county, under the provisions of article 51 of title 13, C.R.S., to have the matter determined as to whether said certificates are void. Such actions shall be brought in the name of the board of county commissioners. Any number of such certificates may be included in one action, and the fee owners of record of the tax liens on the lands on account of the sale of which the certificates were issued shall be made defendants in the action. If any defendant is a nonresident of the state or cannot be found, service of summons may be had upon such defendant in accordance with the provisions of rule 4 of the Colorado rules of civil procedure. If the court, by its decree, finds and determines that any such certificate is void, then the tax lien on the real estate on account of the sale of which such certificate was issued shall be resold for taxes at the next succeeding sale for delinquent taxes; and if the irregularity on account of which such certificate was held void is in the assessment of the property, then the board of county commissioners shall direct the assessor to reassess the same, and, if the delinquent taxes are not thereafter duly paid pursuant to such reassessment, the tax lien on such property shall likewise be sold at the next delinquent tax sale following such reassessment. No appeal shall lie from the final decree of the court in cases brought under this section. No costs of the action shall be assessed against any defendant who files a disclaimer or fails to appear in the action.

Source: L. 64: R&RE, p. 737, § 1. C.R.S. 1963: § 137-11-40. L. 85: Entire section amended, p. 1244, § 27, effective July 1.

39-11-142. Disposition of certificates held by counties. (1) In all cases where a tax lien on real estate has been struck off to the county at tax sales and the county has held the certificate of sale for three years or more, the board of county commissioners may apply for and receive a tax deed in like manner as is provided by law in the case of delinquent tax sale certificates held by individuals. The board of county commissioners, whenever the county becomes entitled to a tax deed, may cause the treasurer to issue, serve, and publish notices, pursuant to law, of application for such tax deed in like manner as in the case of individual certificate holders.

(2) In cases where the county has held the tax certificate for five years or more and such real estate is not located within the limits of any incorporated town or city within the said county, the county may include in one request or demand any or all separate parcels of real estate for which it holds tax sale certificates for sales in any one year, and the board of county commissioners may apply for and receive tax deeds therefor. In cases where the county has held the tax certificate for eight years and in the opinion of the board of county commissioners such real estate is not used, operated, or maintained wholly or in part in the interest or for the benefit of the public, said board shall apply for and receive a tax deed therefor.

(3) Upon making application in the case of tax certificates held by the counties for five years or more, the treasurer shall not be required to give the notice that a request or demand for tax deed has been made upon him provided for in section 39-11-128. The treasurer, in lieu of such notice, at least sixty days before the day said tax deed issues, shall give notice by registered or certified mail, addressed to the last-known residence of the person in whose name the real estate is assessed for the years during which said taxes have not been paid, that a tax deed has been applied for on the particular described property and that said tax deed will issue on a day certain. The treasurer shall also post in a public place in the county courthouse, at least sixty days before said deed issues, a notice stating that a deed will be issued to the county on the real estate described in said notice. Said notice shall contain the name of the person to whom the property is assessed together with the date said tax deed will issue.

(4) In all cases, the owner of the property shall have the right of redemption of the property as provided by law.

(5) Any tax deed, when issued to the county, shall be duly recorded, but no fee shall be required to be paid therefor. Thereafter, the board of county commissioners shall list such property for sale and post such list in the county courthouse and, out of the county general fund, may make such essential repairs thereon and pay such premiums for fire insurance as are necessary for the protection and preservation of any improvements on such property. The board of county commissioners, after a county has acquired such tax deed, in its discretion, may institute and prosecute suits to quiet the title to any such real estate so acquired under such tax deeds.

(6) (a) In all cases where a tax lien on real property has been struck off to the county at a tax sale and the county has held the certificate of sale for thirty years or more without obtaining a tax deed as provided in this section, then such certificate may be declared void and of no effect.

(b) It is the duty of the treasurer at least once each year to prepare and present, at any regular or special meeting of the board of county commissioners, a list of all tax liens on all real property struck off to the county and all certificates of sale relating thereto, which certificates have been held by the county for thirty years or more without obtaining a deed or being otherwise disposed of under this article.

(c) Upon being presented with such list, the board of county commissioners shall determine that the tax liens were struck off to the county, that such certificates of sale relating thereto have been held by the county for thirty years or more, and that no tax deed has been obtained or applied for as provided in this section. Upon making such determination, the board of county commissioners may declare that such certificates are void, and

an order to that effect shall be duly entered in the recorded proceedings of the board, which order shall direct the treasurer to cancel such certificates of sale.

(d) Upon receipt of an order of the board of county commissioners declaring that any certificates of sale are void, the treasurer shall record said order in his records and shall cancel all such certificates specified in said order.

(e) Any action concerning a determination and declaration by a board of county commissioners made pursuant to this subsection (6) shall be commenced within one year after the date of the board's order, or said action shall be forever barred.

Source: L. 64: R&RE, p. 738, § 1. C.R.S. 1963: § 137-11-41. L. 67: p. 802, § 2. L. 85: (1) and (6)(a) to (6)(c) amended, p. 1244, § 28, effective July 1.

39-11-143. Appraisal - county may retain, lease, or sell - definitions. (1) Whenever real property is conveyed by a treasurer to the county by tax deed under section 39-11-142, the assessor shall annually value the same in the manner prescribed by law for taxable property and shall notify the board of county commissioners of such valuation.

(2) The board of county commissioners has the power to retain for public projects, rent, lease, or sell such real property as provided in this section.

(2.5) If the board of county commissioners retains such real property for a present or future public project, as defined in section 30-20-301 (2), C.R.S., it shall pass a resolution describing the project for which the property is retained. The board of county commissioners may rent or lease any lot or parcel retained for a present or future public project in accordance with subsection (3) of this section. For purposes of this section, using property to generate revenue for the county is not a public project.

(3) The board of county commissioners may lease such real property to an affiliated entity, but no lease shall be for a period exceeding five years. For purposes of this subsection (3), "affiliated entity" means a nonprofit entity with which the county enters into a contract for the delivery of goods or services to the county or to third parties on behalf of the county.

(4) (a) Any such real property that is not retained or leased in accordance with subsection (2.5) or (3) of this section shall be sold at public sale by the board of county commissioners within one year after the property is conveyed to the county; except that the board of county commissioners may reject any bid that is less than the value of the property as determined by the assessor. Prior to offering such property for sale, the board of county commissioners shall obtain from the assessor a certificate as to the current actual value and the valuation for assessment of the same. A notice of such sale shall be posted in a public place in the county courthouse at least thirty days before the date of sale, and such notice of sale shall also be advertised in two issues of a newspaper of general circulation in the county in which the property is situated, said newspaper notices to appear one week apart and within the thirty days as above provided. Such notice shall reserve the right upon the part of the board of county commissioners to reject any bid that is less than the value determined by the assessor. Said notice shall be substantially in the following form:

“NOTICE

Public notice is hereby given that the following real property acquired by the County of, Colorado, by tax deed, to wit:

(description of property)

will, according to law, be offered at public sale at the county courthouse,, Colorado, on the day of, 20...., at the hour of to the highest and best bidder. The board of county commissioners reserves the right to reject any bid that is less than the current actual value fixed by the county assessor.

.....
County Clerk and Recorder.”

(a.5) The notice of sale posted pursuant to paragraph (a) of this subsection (4) shall contain a statement substantially in the following form: "If this property is at least fifty years old, it may be eligible for inclusion in the state register of historic properties or designation as a landmark. Such property may be eligible for certain rehabilitation grants and incentives.

(b) Such real property shall be sold at public sale for the highest and best bid for any lots or parcels, as determined in the discretion of the board of county commissioners; except that the board of county commissioners may reject any bid that is less than the value of the property as determined by the assessor. Such real property may be sold in such lots or parcels and upon such terms of payment as the board of county commissioners deems acceptable, but no deed shall be issued until the purchaser has made payment in full. Upon written application of any person, the board of county commissioners shall offer for sale the property requested by such person to be sold; except that no parcel shall be divided for the purpose of such requested sale unless the board of county commissioners specifically permits such division. The board of county commissioners may, prior to the sale of any lot or parcel, reserve or grant streets, alleys, or roads or utilities or other easements, public or private, under such terms and conditions as it may deem advisable.

(5) Such deeds shall be issued by a commissioner to convey, duly appointed by the board of county commissioners, which commissioner shall act upon the direction of the board of county commissioners, but such deed shall be issued without covenants of warranty.

(6) The foregoing provisions of this section shall not apply to any city and county having a population of more than three hundred thousand. Sales and leases by such city and county shall be made in compliance with the applicable provisions of its charter or ordinances. All sales and leases made before August 1, 1964, by such city and county of any real estate acquired by it under tax deeds, whether made or authorized by the board of county commissioners, the mayor of said city and county, or in purported compliance with its charter or ordinances, are deemed valid, and such sales and leases are hereby confirmed. All actions or proceedings to set aside or question the validity of such sales or leases made before August 1, 1964, by such city and county shall be brought within six months from said date and not thereafter. This subsection (6) shall not reinstate any such action or proceeding barred by law before August 1, 1964.

Source: L. 64: R&RE, p. 739, § 1. C.R.S. 1963: § 137-11-42. L. 2004: (1), (2), (3), and (4) amended and (2.5) added, p. 159, § 2, effective August 4.

39-11-144. County lands, prior sales validated. All sales of such real estate made by the board of county commissioners of any county shall be deemed valid, and such sales are hereby confirmed if such sales were made at either public or private sale, whether made by deed issued by the treasurer upon direction of the board of county commissioners or by deed issued by a duly appointed commissioner to convey upon direction of the board of county commissioners.

Source: L. 64: R&RE, p. 741, § 1. C.R.S. 1963: § 137-11-43.

39-11-145. Proceeds of sales. All net proceeds from the sale, lease, or other disposition of such real estate so conveyed to the county by the treasurer shall be paid to the treasurer of such county, and the treasurer shall distribute said proceeds to the various taxing jurisdictions in which such real estate is situated in the same proportion that the ad valorem taxes levied by each taxing jurisdiction in the preceding calendar year bears to the total of all ad valorem taxes levied on such real estate in the preceding calendar year.

Source: L. 64: R&RE, p. 741, § 1. C.R.S. 1963: § 137-11-44. L. 69: p. 1127, § 1.

39-11-146. Lien of special assessment not affected. Nothing in sections 39-11-143 to 39-11-145 shall be construed to affect in any manner or degree whatsoever the lien of any special assessment to which such real estate and the conveyance thereof by the treasurer is subject under law.

Source: L. 64: R&RE, p. 741, § 1. C.R.S. 1963: § 137-11-45.

39-11-147. Treasurer to report payments. A complete report of all payments made to and accepted by the treasurer under sections 39-11-142, 39-11-143, and 39-11-145 shall be made by him, a copy of which shall be sent to the board of county commissioners of his county, to the administrator, and to the controller at the end of each month.

Source: L. 64: R&RE, p. 741, § 1. C.R.S. 1963: § 137-11-46.

39-11-148. Limitations on tax certificates - special improvement liens. (1) No lien upon real property created by a tax certificate or a certificate of purchase issued by a treasurer on account of any delinquent property taxes or any special assessment of any kind or nature shall remain a lien thereon for a period longer than fifteen years after the original issuance thereof, except as provided in subsection (3) of this section. This section shall not apply to any tax certificate or certificate of purchase issued to and held by the county, city, city and county, or district levying such tax or special assessment; except that, in the event of an assignment of such tax certificate or certificate of purchase so issued to and held by such county, city, city and county, or district, the lien of such tax certificate or certificate of purchase shall cease fifteen years after the date of its issuance subject only to the provisions of subsection (3) of this section.

(2) No treasurer's deed shall issue on any tax sale evidenced by tax certificate or certificate of purchase where such tax certificate or certificate of purchase has ceased to be a lien pursuant to the provisions of this section and application for such treasurer's deed is not pending at the time of the expiration of the limitation period provided for in this section.

(3) In the event of an assignment of a tax certificate or certificate of purchase held by a county, city, city and county, or district levying such tax wherein such certificate is fifteen years old at the time of assignment or will become fifteen years old within one year from the date of such assignment, the assignee thereof shall be entitled to a tax deed in the manner provided by law if such assignee or other legal holder of such certificate institutes proceedings to procure a tax deed by making a demand upon the treasurer for same, as provided by law, within one year from the date of such assignment by the county, city, city and county, or district levying such tax.

(4) Whenever a lien created by a tax certificate has expired by reason of the provisions of this section, the treasurer shall immediately issue a certificate of cancellation describing the real estate included in the certificate of purchase or tax certificate and giving the date of cancellation, and he shall also make proper entries in the book of sales in his office as follows: "Cancelled by provision of section 39-11-148, C.R.S.", with the date of such entry. He shall also present every such certificate of cancellation to the county clerk and recorder who shall enter the same in the record of land for which a tax lien was sold for delinquent taxes and endorse the date of entry on the certificate of cancellation and file the same, and such certificate and the record thereof shall be prima facie evidence of the cancellation of the certificate of purchase or tax certificate and of the release of the lien of such certificate on the lands therein described. Failure to record such certificate of cancellation shall not extend the lien created by the certificate of purchase or tax certificate. The treasurer and county clerk and recorder shall not be entitled to any fees for the issuing of such certificate of cancellation nor for the entries in their books made under the provisions of this subsection (4).

(5) Whenever a lien created pursuant to a tax certificate becomes unenforceable pursuant to section 31-25-1119, C.R.S., the treasurer shall immediately issue a certificate of cancellation describing the real estate included in the certificate of purchase or tax certificate indicating thereon the date of cancellation and shall make the appropriate entries

in the book of sales in his office, as follows: "Cancelled by provision of sections 31-25-1119 and 39-11-148, C.R.S.", with the date of such entry. He shall present every such certificate of cancellation to the county clerk and recorder who shall enter the same in the record of land for which a tax lien was sold for delinquent taxes and endorse the date of entry on the said certificate of cancellation and file the same, and such certificate and the record thereof shall be prima facie evidence of the cancellation of the certificate of purchase or tax certificate and of the release of the lien of such certificate on the lands therein described. Failure to record such certificate of cancellation shall not extend the lien created by the certificate of purchase or tax certificate. The treasurer and county clerk and recorder shall not be entitled to any fees for the issuing and recording of such certificate of cancellation nor for the entries in their books made under the provisions of this subsection (5).

Source: L. 64: R&RE, p. 742, § 1. C.R.S. 1963: § 137-11-47. L. 67: p. 802, §§ 3, 4. L. 81: (5) amended, p. 1627, § 40, effective July 1. L. 85: (4) and (5) amended, p. 1245, § 29, effective July 1.

39-11-149. Sales en masse valid. If two or more noncontiguous lots, tracts of land, or mining claims or portions thereof have not been separately valued and assessed or, having been separately valued and assessed, whether having a common ownership or not, have had tax liens thereof sold en masse for a gross sum for the nonpayment of taxes and charges thereon, then, after seven years from the date of any such sale, such assessment and sale and any tax sale certificate issued thereon shall be deemed valid and legal and shall be so considered in all actions, suits, or proceedings in which is involved the validity of any such assessment, sale, tax sale certificate, or treasurer's deed issued thereon. There is excepted from this section any such action, suit, or proceeding pending on August 1, 1964, wherein any party thereto has or may assert the invalidity of any such assessment, sale, tax sale certificate, or treasurer's deed. Nothing in this section shall be construed to alter, amend, or repeal section 39-11-148.

Source: L. 64: R&RE, p. 743, § 1. C.R.S. 1963: § 137-11-48. L. 85: Entire section amended, p. 1246, § 30, effective July 1.

ANNOTATION

Law reviews. For article, "Curative Statutes of Colorado Respecting Titles to Real Estate", see 26 Dicta 321 (1949).

39-11-150. Sales of tax liens on severed mineral interests. Sales of tax liens for delinquent taxes due on severed mineral interests shall take place at the same place and time and under the same circumstances as in this article, but, where the surface estate ownership is coterminous with the severed mineral interest, the owner of the surface estate shall have the right of first refusal to purchase the tax lien on the severed mineral interest, and the surface owner shall be allowed to pay all delinquent taxes due and owing for the severed mineral interest in lieu of the proceeds that would be collected from a tax sale of a tax lien on the severed mineral interest. The treasurer shall notify the surface owner, by mail, at his last-known address, of his right of refusal at least ten days prior to the sale of a tax lien on the severed mineral interest. The surface owner shall have until two days prior to the sale to exercise the right of first refusal. If the surface owner does not exercise his right of first refusal, the tax lien on such severed mineral interest shall be sold. No action for the recovery of a severed mineral interest for which a tax deed was issued under the provisions of this article shall lie unless brought within the same time period as that limiting actions for the recovery of land pursuant to section 39-12-101.

Source: L. 73: p. 1430, § 3. C.R.S. 1963: § 137-11-50. L. 85: Entire section amended, p. 1246, § 31, effective July 1.

ANNOTATION

Law reviews. For article, "Severed Minerals as a Deterrent to Land Development", see 51 Den. L.J. 1 (1974).

mineral interest to obtain a tax lien on the surface. Notch Mountain Corp. v. Elliott, 898 P.2d 550 (Colo. 1995).

This section does not give a reciprocal right of first refusal to the owner of a severed

39-11-151. County officials and employees may not acquire a tax lien or property by sale of a tax lien. (1) (a) No property for which a tax lien is sold for delinquent taxes under this article shall be conveyed to an elected or appointed county official, to a county employee, or to a member of the immediate family of any such person or to the agent of any such county official or employee, if the tax lien on such property is sold during the time the official or employee holds office or is employed.

(b) No tax lien shall be sold to an elected or appointed county official, to a county employee, or to a member of the immediate family of such person or to the agent of any such county official or employee during the time the official or employee holds office or is employed.

(2) The purchase of any tax lien or the conveyance of any property by tax deed pursuant to this article is exempt from the provisions of this section under the following circumstances:

(a) If the property to be conveyed was owned by the county official or county employee, or by a member of the immediate family of any such person, immediately prior to the sale of a tax lien on such property for delinquent taxes;

(b) If such property is situated within a county other than the county to which such county official or employee is elected, appointed, or employed; or

(c) If the property to be conveyed is a severed mineral interest and, at the time of the conveyance, the county official or county employee is the owner of the surface estate which is coterminous with the severed mineral interest.

(3) Any county official, county employee, or member of the immediate family of any such person, or the agent of any such county official or employee, who knowingly purchases any tax lien or receives a conveyance of property in violation of the provisions of this section commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

Source: **L. 75:** Entire section added, p. 1481, § 1, effective June 29. **L. 85:** (1) and (2) amended, p. 1246, § 32, effective July 1. **L. 94:** Entire section amended, p. 757, § 12, effective April 20. **L. 2002:** (3) amended, p. 1555, § 346, effective October 1.

Cross references: (1) For other provisions relating to standards of conduct for public officers and employees, see article 18 of title 24.

(2) For the legislative declaration contained in the 2002 act amending subsection (3), see section 1 of chapter 318, Session Laws of Colorado 2002.

39-11-152. Combined sale of delinquent tax liens and special assessment liens. Whenever provision is made in this article for the sale of a tax lien on property, such sale shall include the sale of any lien for delinquent special assessments on such property which have been certified to the county treasurer for collection. The separate sale of liens for delinquent general taxes and for delinquent special assessments on property is hereby prohibited.

Source: **L. 93:** Entire section added, p. 81, § 1, effective March 26.

ARTICLE 12

Redemption

Editor’s note: This article was repealed and reenacted in 1964. For historical information concerning the repeal and reenactment, see the editor’s note before the article 1 heading.

Law reviews: For article, “Survey of Colorado Tax Liens”, see 14 Colo. Law. 1765 (1985).

39-12-101.	Limitation of actions for re-covery of land.	39-12-108.	(Repealed) Payment of redemption money.
39-12-102.	Action to recover mining property.	39-12-109.	Payment upon surrender of tax certificate.
39-12-103.	Redemption made - interest.	39-12-110.	Payment when certificate lost.
39-12-104.	Redemption of real property of person under disability.	39-12-111.	Land wrongfully sold - repay-ment.
39-12-105.	Certificate of redemption.	39-12-112.	Allowance for erroneous as-sessments.
39-12-106.	Entry by county clerk and recorder of redemption cer-tificate. (Repealed)	39-12-113.	Redemption of proportionate interest.
39-12-107.	Fee for entering certificate.		

39-12-101. Limitation of actions for recovery of land. No action for the recovery of land for which a tax deed was issued under the provisions of article 11 of this title for delinquent taxes shall lie unless the same is brought within five years after the execution and delivery of the deed therefor by the treasurer, any laws to the contrary notwithstanding; except that, when any owner of such land, for which a tax deed has been issued, at the time of the execution and delivery of the deed by the treasurer is under legal disability, it shall be lawful for him to bring a suit or action for the recovery of the land within the period during which he has the right to make redemption of such land from the tax sale upon which the deed is based. When a recovery of any of such land is effected in any suit, action, or proceeding, the value of all improvements made in good faith on such lands, and all sums paid for the tax lien on said land and for improvements, and all costs incident to the issuance and recording of the treasurer’s deed, and all taxes and assessments paid thereon after the sale of the tax lien thereof, including the redemption value of all tax sale certificates redeemed, held, or surrendered for redemption by the grantee in such treasurer’s deed or his heirs or assigns, shall be ascertained by the court or jury trying the action for recovery and shall be paid, together with interest thereon at the rate of twelve percent per annum, by the person recovering said land to the persons entitled thereto, and the payment of such sum shall be a condition precedent to the entry of judgment or decree in such suit, action, or proceeding. All such treasurer’s deeds executed by the treasurer purporting to convey lands and improvements thereon for all purposes shall be deemed to be color of title from and after the time the same is recorded in the office of the county clerk and recorder for the county in which said lands are located. The term “improvements” includes sums and amounts of money expended thereon in good faith by the grantee and his successors and assigns in search of minerals and oil, as well as other expenditures for the improvements of such lands which add to the cost and value thereof.

Source: L. 64: R&RE, p. 743, § 1. C.R.S. 1963: § 137-12-1. L. 85: Entire section amended, p. 1247, § 33, effective July 1.

Cross references: For limitation of actions with respect to persons under disability, see article 81 of title 13.

ANNOTATION

- I. General Consideration.
- II. Conditions Precedent to Recovery.

I. GENERAL CONSIDERATION.

Law reviews. For article, "Curative Statutes of Colorado Respecting Titles to Real Estate", see 26 Dicta 321 (1949). For article, "Summary of Denver Bar-Sponsored Bills Passed by General Assembly", see 28 Dicta 173 (1951). For comment on *Fuschino v. Lutin*, see 24 Rocky Mt. L. Rev. 257 (1952). For note, "Adverse Possession in Colorado", see 27 Rocky Mt. L. Rev. 88 (1954). For article, "One Year Review of Real Property", see 36 Dicta 57 (1959).

Annotator's note. The following annotations include cases decided under this section as it existed prior to its 1964 repeal and reenactment.

Section is for the purpose of protecting claimants under tax deeds, and to that end it is provided that an action by the owner shall be barred if not brought within five years after the sale thereof. *Wood v. McCombe*, 37 Colo. 174, 86 P. 319, aff'd, 208 U.S. 226, 28 S. Ct. 263, 52 L. Ed. 464 (1906); *Cripple Creek Trading & Mining Co. v. Stewart*, 100 Colo. 271, 67 P.2d 1032 (1937).

Purpose of section was to give landowner time to redeem land. This section was passed for the purpose of affording any landowner an ample opportunity of redeeming his lands sold for nonpayment of taxes. *Fastenau v. Asher*, 124 Colo. 161, 235 P.2d 587 (1951).

Section is to be liberally construed. *Fastenau v. Asher*, 124 Colo. 161, 235 P.2d 587 (1951).

Statutes of limitation provide sufficient protection for purchasers under tax deeds. The statutes of limitation, appearing in §§ 38-41-111, 39-12-102, and this section, provide sufficient protection for the purchasers of property under tax deeds without further limitations being imposed by the courts. Until the applicable periods of limitation have expired, tax deeds, even though valid on their face, are subject to attack for irregularities in the proceedings. *Bald Eagle Mining & Ref. Co. v. Brunton*, 165 Colo. 28, 437 P.2d 59 (1968).

Tax deed must be in substantial compliance with statutory form prescribed at the time of the tax sale, and a tax deed in statutory form is fair and not void on its face. *Aspen-Western Corp. v. Bd. of County Comm'rs*, 650 P.2d 1326 (Colo. App. 1982).

"Recovery", "recovering", and "obtain possession" defined. The terms "recovery", "recovering", and "obtain possession", as used in this section, mean not merely the regaining of possession which has been once lost, or the obtaining of possession not theretofore had, but also the retention of possession already had and

which has not been disturbed. *Central Realty Co. v. Frost*, 76 Colo. 413, 232 P. 1111 (1925).

Section is no defense in an action to quiet title. *Scott v. Watkins*, 61 Colo. 244, 157 P. 3 (1916).

It applies only to actions for recovery of possession. By its plain language, this section seems not to have been intended as a defense when the removal of cloud from title alone is involved, but instead it is meant to apply as a defense only to actions for the recovery of possession and the ouster from the land of someone in possession. *Morris v. St. Louis Nat'l Bank*, 17 Colo. 231, 29 P. 802 (1892).

Action to set aside voidable tax deed. An action brought by the owner of the fee to set aside a tax deed that is not absolutely void, but voidable, is an action for the recovery of land sold for taxes; therefore, this section is applicable. *Phillips v. City & County of Denver*, 115 Colo. 532, 175 P.2d 805 (1946).

Unless action to quiet title in essence one for possession. Where an action is brought to the quiet title against the holder of a tax deed in possession over five years and the holder relies on the limitations of this section, this defense is good, since the action is in reality one for possession of land and not to quiet title. *Vogt v. Hansen*, 123 Colo. 105, 225 P.2d 1040 (1950).

Section inapplicable where premises not sold for taxes. This section does not have any application if the subject matter of the controversy is not sold for taxes, meaning if the rights of the parties are not dependent upon the validity of the tax deed but upon whether it embraces the premises involved. *Denver Trackage & Imp. Co. v. Colo. & S. Ry.*, 58 Colo. 313, 145 P. 707 (1914).

It has no application to the purchaser at a tax sale. It applies solely to the owner of the property, whose title is sought to be divested by the tax proceedings. *Sullivan v. Collins*, 20 Colo. 528, 39 P. 334 (1895).

Section inapplicable unless holder of treasurer's deed in possession. The five-year statute of limitations in this section may not be relied upon as a defense unless the holder of the treasurer's deed is in actual possession of the property at the time the action is commenced. *Welsh v. Levy*, 612 P.2d 80 (Colo. 1980); *Aspen-Western Corp. v. Bd. of County Comm'rs*, 661 P.2d 1175 (Colo. App. 1982).

To qualify for the protection afforded by this five-year statute of limitations in a quiet title action, the holder of a tax deed must demonstrate actual possession of the property at the time the action is commenced. *Aspen-Western Corp. v. Bd. of County Comm'rs*, 650 P.2d 1326 (Colo. App. 1982).

Action for recovery barred unless filed within five years. This section bars an action for

the recovery of land sold for taxes unless such action is filed within five years from the delivery of the treasurer's deed. *Bd. of County Comm'rs v. Blanning*, 29 Colo. App. 61, 479 P.2d 404 (1970).

All questions with reference to tax proceedings generally barred. The design of this section is, generally, to bar all questions with reference to the tax proceedings, except such as go to the power and jurisdiction of the taxing officers, or the fraud and misconduct of the parties, unless an action is brought within the time limited. *Crisman v. Johnson*, 23 Colo. 264, 47 P. 296 (1896).

Grantee need not wait five years before bringing action. A party whose rights are affected by a tax deed may bring an action within five years to have it set aside, but this limitation does not require the grantee in a tax deed, or those claiming under him, to wait that period before bringing an action to quiet title based upon the deed. *Held v. Houser*, 53 Colo. 363, 127 P. 139 (1912).

Tax deed without effect until recorded. A tax deed is without effect to set in motion the statute of limitations until it is recorded. *Empire Ranch & Cattle Co. v. Lumelius*, 23 Colo. App. 51, 127 P. 452 (1912).

Statute of limitations not set into motion by void deed. A tax deed void on its face does not set in motion the five-year limitation under this section. *Miller v. Weldon*, 26 Colo. App. 108, 140 P. 930 (1914); *Jones v. Empire Ranch & Cattle Co.*, 25 Colo. App. 382, 138 P. 62 (1914); *Buckland v. Fiedler*, 25 Colo. App. 565, 140 P. 472 (1914); *Empire Ranch & Cattle Co. v. Weldon*, 26 Colo. App. 111, 141 P. 138 (1914); *Empire Ranch & Cattle Co. v. Brownson*, 26 Colo. App. 228, 142 P. 421 (1914); *North Am. Realty Co. v. Brady*, 77 Colo. 56, 234 P. 1054 (1925); *Hochmuth v. Norton*, 90 Colo. 453, 9 P.2d 1060 (1932); *Knoch v. County of Mesa*, 159 Colo. 241, 411 P.2d 1 (1960); *Lake Canal Reservoir Co. v. Beethe*, 227 P.3d 882 (Colo. 2010).

Because deficiencies in deed did not call into question the authority or jurisdiction to issue the deed, the flaws rendered the deed voidable, but not void; therefore, the exception to the statute of limitations for void deeds does not apply. Void tax deeds are deeds that are issued without authority or jurisdiction. Voidable tax deeds are issued with authority but authority is exercised in an improper manner. A deed is void and therefore not subject to the statute of limitations when the taxing entity lacked the authority or jurisdiction to issue it. *Lake Canal Reservoir Co. v. Beethe*, 227 P.3d 882 (Colo. 2010).

Deed not reciting notice given of purchaser's application. A tax deed does not set in motion the five-year statute of limitations where there is no recitation of the notice given of the

tax purchaser's intention to apply for his deed. *Sheesley v. Voorhees*, 24 Colo. App. 428, 134 P. 1008 (1913).

Section bars action if the tax deed is fair on its face. *Wood v. McCombe*, 37 Colo. 174, 86 P. 319, aff'd, 208 U.S. 226, 28 S. Ct. 263, 52 L. Ed. 464 (1906); *North Am. Realty Co. v. Brady*, 77 Colo. 56, 234 P. 1054 (1925).

Applied in *Knowles v. Martin*, 20 Colo. 393, 38 P. 467 (1894); *Charlton v. Kelly*, 24 Colo. 273, 50 P. 1042 (1897); *Pueblo Realty Co. v. Tate*, 32 Colo. 67, 75 P. 402 (1904); *Knight v. Boring*, 38 Colo. 153, 87 P. 1078 (1906); *Pollen v. Magna Charter Mining & Milling Co.*, 40 Colo. 89, 90 P. 639 (1907); *Whitehead v. Callahan*, 44 Colo. 396, 99 P. 57 (1908); *Halbouer v. Cuenin*, 45 Colo. 507, 101 P. 763 (1909); *Empire Ranch & Cattle Co. v. Lanning*, 49 Colo. 458, 113 P. 491 (1911); *Empire Ranch & Cattle Co. v. Saul*, 22 Colo. App. 605, 127 P. 123 (1912); *Empire Ranch & Cattle Co. v. Howell*, 23 Colo. App. 265, 129 P. 245 (1913); *Gibson v. Interior Realty & Inv. Co.*, 70 Colo. 5, 201 P. 680 (1921); *Langley v. Young*, 72 Colo. 466, 211 P. 640 (1922); *Bennett v. Rohan*, 73 Colo. 551, 216 P. 1052 (1923); *Fuschino v. Lutin*, 124 Colo. 42, 234 P.2d 906 (1951).

II. CONDITIONS PRECEDENT TO RECOVERY.

Owner must pay tax title claimant amount for which lands sold. This section provides that, as a prerequisite to a recovery of lands by the owner against one claiming under an invalid tax deed, the owner must pay the tax title claimant the amount for which the lands were sold. *Delta Land & Orchard Co. v. Zaninetti*, 64 Colo. 268, 170 P. 964 (1918).

The owner must pay taxes paid by purchaser, with interest. In an action brought to quiet title to certain lands clouded by a void tax deed, the taxes upon which it is based being legal, the owner, as a condition precedent to an absolute decree in his favor, must pay to the defendant the taxes paid by him subsequent to the sale, with interest, in accordance with this section and also the amount for which the property was sold at the tax sale with interest and penalties in accordance with § 39-12-103. *Buchanan v. Griswold*, 37 Colo. 18, 86 P. 1041 (1906); *Central Realty Co. v. Frost*, 76 Colo. 413, 232 P. 1111 (1925).

Taxes need not be paid in action for trespass. This section refers only to land sold for taxes. Where an action is not to recover land but for trespass on land, the claim for reimbursement for taxes paid can only be a claim for mitigation of damages. *Smith v. Highland Mary Mining, Milling & Power Co.*, 82 Colo. 288, 259 P. 1025 (1927).

Recovery of taxes under invalid deed allowed only when record discloses property

taxed. He who pays a tax and gets a deed which is invalid can recover only when the record discloses upon what property the tax was paid and it appears that reimbursement will discharge the tax. *Cripple Creek Trading & Mining Co. v. Stewart*, 100 Colo. 271, 67 P.2d 1032 (1937).

Purchaser to be reimbursed for improvements. That a vendee who remains in possession for a long period of time and who makes improvements and pays taxes necessarily ac-

quires equitable rights is recognized in this section, which provides that the vendee is entitled to reimbursement for expenditures of this nature. *White v. Widger*, 144 Colo. 566, 358 P.2d 592 (1960).

No interest prior to judgment. The value of improvements made by the defendant, allowed to him under this section, does not bear interest prior to judgment. *Hapney v. Dunn*, 26 Colo. App. 412, 142 P. 423 (1914).

39-12-102. Action to recover mining property. No action shall be maintained for the recovery of mining or placer claims unless such action is brought within a period of two years from the commencement of actual possession obtained under tax deed.

Source: L. 64: R&RE, p. 744, § 1. C.R.S. 1963: § 137-12-2.

ANNOTATION

Statutes of limitations provide sufficient protection for purchasers under tax deeds. The statutes of limitations, appearing in §§ 38-41-111, 39-12-101, and this section, provide sufficient protection for the purchasers of property under tax deeds without further limitations being imposed by the courts. Until the applicable periods of limitation have expired, tax deeds,

even though valid on their face, are subject to attack for irregularities in the proceedings. *Bald Eagle Mining & Ref. Co. v. Brunton*, 165 Colo. 28, 437 P.2d 59 (1968).

Applied in *White Cap Mining Co. v. Resurrection Mining Co.*, 115 Colo. 396, 174 P.2d 727 (1946) (decided under former law).

39-12-103. Redemption made - interest. (1) Real property for which a tax lien was sold under the provisions of article 11 of this title as a result of delinquent taxes may be redeemed by the owner thereof or his agent, assignee, or attorney, or by any person having a legal or equitable claim therein, or by a holder of a tax sale certificate; except that such holder may redeem such real property from any sale of a tax lien thereof made subsequent to the time of the issuance of the tax sale certificate upon which he is relying, and the amount paid for the redemption of the subsequent certificate of purchase shall be endorsed as subsequent taxes paid on the certificate upon which he is relying.

(2) An undivided interest may be redeemed upon payment of a ratable share of the sum required to redeem the whole even though a tax lien for the whole has been sold. In case a tax lien on any tract of land sold for delinquent taxes under the provisions of article 11 of this title belongs to two or more separate and distinct parties in severalty, the treasurer, when satisfied of the fact and upon application of any one of the parties or his agent, assignee, or attorney and upon payment of the proper proportional amount, shall issue a certificate of redemption for such party's interest in said land.

(3) The redemption may be made at any time before the execution of a treasurer's deed to the purchaser or his heirs or assigns upon payment to the treasurer, to be held by him subject to the order of the purchaser, of the amount of taxes, delinquent interest, and costs for which the tax lien on the property was sold, with redemption interest thereon from the date of sale at the rate which is determined as provided in this subsection (3), together with the amount of all taxes accruing on such real property after the sale, paid by the purchaser and endorsed on his certificate of purchase, with redemption interest at the rate which is determined as provided in this subsection (3) on such taxes so endorsed on the certificate of purchase. Any payment under this section shall be deemed received by the treasurer on the date that it is actually received in the treasurer's office. The annual rate of redemption interest shall be nine percentage points above the discount rate, which discount rate shall be the rate of interest a commercial bank pays to the federal reserve bank of Kansas City using a government bond or other eligible paper as security, and shall be rounded to the nearest full percent. The commissioner of banking shall establish the annual rate of redemption interest based upon the computation specified immediately above. Such annual rate of

redemption interest shall be so established as of September 1, 1981, to become effective October 1, 1981. Thereafter, on September 1 of each year, the annual rate of redemption interest shall be established in the same manner, to become effective on October 1 of the same year.

(4) If subsequent taxes are paid before the time when they would become delinquent, interest shall be computed only from the time of their delinquency. Such taxes shall bear interest at the annual rate set forth in subsection (3) of this section, and no more, from the time when the purchaser becomes entitled to a deed up to the time of issuance of such deed.

(5) All statutory fees paid by the purchaser in connection with such certificate shall bear the same rate of interest as the original amount for which the tax lien on the property was sold, the same to be prorated among the several tracts described in said certificates.

(6) In computing the amount of interest due, portions of months shall be counted as whole months.

Source: L. 64: R&RE, p. 744, § 1. C.R.S. 1963: § 137-12-3. L. 69: p. 1126, § 2. L. 71: p. 330, § 12. L. 79: (3) amended, p. 1421, § 3, effective January 1, 1980. L. 81: (3) amended, p. 1861, § 1, effective September 1. L. 85: (1) to (5) amended, p. 1247, § 34, effective July 1. L. 89: (4) amended, p. 1467, § 34, effective June 7. L. 92: (3) amended, p. 2233, § 24, effective April 9.

ANNOTATION

Law reviews. For article, "Delinquent Oil and Gas Ad Valorem Taxes: Protecting Property Interests", see 16 Colo. Law. 798 (1987).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

The policy underlying the right of redemption is the general policy of the law that no man shall forfeit his estate because of his inability to meet engagements on the day prescribed by law for their payment. Because the law favors redemption, redemption statutes are construed liberally to afford property owners ample opportunity to redeem. *Dove Valley Bus. Park v. County Comm'rs*, 945 P.2d 395 (Colo. 1997).

In Colorado, delinquent taxpayers have no constitutional right to redemption. Instead, redemption is a statutory privilege created by the general assembly, which may be exercised only as provided by statute. *Dove Valley Bus. Park v. County Comm'rs*, 945 P.2d 395 (Colo. 1997).

Section is to be liberally construed in favor of the redemptioner. *Bean v. Westwood*, 101 Colo. 288, 73 P.2d 386 (1937).

Attempted redemption by person having no interest in the property is ineffectual and may be set aside by the holder of a valid certificate of purchase obtained at a tax sale. *Saunders v. Bankston*, 31 Colo. App. 551, 506 P.2d 1253 (1972).

One having lease and option to purchase may redeem. One having a lease and an option to purchase land, having exercised his option and received a deed from the reputed owner, thereby acquires an equitable claim to the property under which he has the right to redeem it from a tax sale. *Bean v. Westwood*, 101 Colo. 288, 73 P.2d 386 (1937).

Assignee with security interest in property entitled to redeem. An assignee of a note, which note carries with it a security interest in real property, has a right to redeem and has an interest in the property. *Swofford v. Colo. Nat'l Bank*, 628 P.2d 184 (Colo. App. 1981).

One with a lien interest in land may redeem from tax sale. *Miller v. First Nat'l Bank*, 164 Colo. 449, 435 P.2d 899 (1968).

Lienor's acquisition of title cannot cut off other lienor. Equity will not permit one lienor to acquire a tax title while cutting off other lienor but will treat his purchase of the tax title as a payment of the taxes by a redemption, thereby giving him a preferred lien to the extent paid out to redeem. *Miller v. First Nat'l Bank*, 164 Colo. 449, 435 P.2d 899 (1968).

Amount payable on redemption not purchase price, but amount of tax involved. Where, at a tax sale, a certificate of purchase is issued to the county which thereafter is sold for a price fixed by a resolution of the board of county commissioners, the amount payable on redemption is not the sum paid by the purchaser as established by the board but the amount of the tax involved, which sums may be very different. *Tarabino Real Estate Co. v. Dunlavy*, 105 Colo. 523, 99 P.2d 926 (1940).

Redemption interest is a statutorily determined penalty exacted from the taxpayer for the privilege of redemption. *Dove Valley Bus. Park v. County Comm'rs*, 945 P.2d 395 (Colo. 1997).

The plain language of subsection (3), which explicitly warns a taxpayer that redemption interest will accrue based on the amount of taxes paid by the purchaser, did not provide the taxpayers with any basis to conclude that if

they failed to pay their property taxes in a timely manner, and later redeemed their property, that the redemption interest on the amount paid by the purchaser would not apply to them. *Dove Valley Bus. Park v. County Comm'rs*, 945 P.2d 395 (Colo. 1997).

Colorado scheme does not guarantee pre-deprivation relief; however, due process requirements were met since the taxpayers received their "full refund" - the over assessed tax plus refund interest - even though redemption interest, which due process does not extend to, was not refunded. *Dove Valley Bus. Park v. County Comm'rs*, 945 P.2d 395 (Colo. 1997).

County was not unjustly enriched by the payment of redemption interest calculated on the basis of an assessment determined to be excessive at a date after the county conducted the tax lien sale. *Dove Valley Bus. Park v. County Comm'rs*, 945 P.2d 395 (Colo. 1997).

County treasurer acts in a quasi-judicial capacity in matters concerning redemption of property from tax sales. *Johnson v. Dunkel*, 132 Colo. 383, 288 P.2d 343 (1955).

Treasurer receives redemption money as agent of purchaser. Subsection (3) provides that the redemption money may be paid to the treasurer, but that officer holds it subject to the order of the purchaser; therefore, he receives it not as the agent of the state or county but as the agent of the purchaser. *Statton v. People ex rel. Burr*, 18 Colo. App. 85, 70 P. 157 (1902).

No mandamus to release land except upon payment of entire sale amount. Where land covered by a deed on trust is sold for taxes, part of which were assessed against the land and part of which were assessed as the personal tax of the owner, in a proper proceeding, the beneficiary of the trust deed is entitled to a release as to his interest in the land from the tax sale by payment only of the amount properly chargeable against the land, but mandamus will not lie against the county treasurer to compel him to release the land from the tax sale except upon payment of the entire amount for which it was sold, with interest and penalties. The proper remedy would be a proceeding in equity against the holder of the certificate of purchase. *Statton v. People ex rel. Burr*, 18 Colo. App. 85, 70 P. 157 (1902).

Action to set aside voidable tax deed not within section. In an action to set aside a voidable tax deed, interest on taxes paid on the land

by the holder on the deed is not computed according to this section, but according to § 39-12-101. *Phillips v. City & County of Denver*, 115 Colo. 532, 175 P.2d 805 (1946).

Owner of severed mineral rights underlying property may not redeem. Although both common law and the deed in question gave the owner of severed mineral interests the right to use a reasonable amount of the surface estate for mineral development, such right was not a "legal or equitable claim" within the meaning of subsection (1). To hold otherwise would allow the mineral owner to augment his ownership, which is not a right recognized as part of the redemption process. *Notch Mountain Corp. v. Elliott*, 898 P.2d 550 (Colo. 1995).

The right to bring an equitable action cannot be considered synonymous with an equitable claim in the property. *Notch Mountain Corp. v. Elliott*, 898 P.2d 550 (Colo. 1995).

Redemption does not transfer title to the redemptioner, but rather prevents a transfer of title by tax deed. *Notch Mountain Corp. v. Elliott*, 898 P.2d 550 (Colo. 1995).

Title to a severed mineral interest is not conveyed under a tax deed issued for delinquent taxes levied against the surface estate. *Notch Mountain Corp. v. Elliott*, 898 P.2d 550 (Colo. 1995).

Limited partner does not have a right to redeem real property owned by the limited partnership because limited partner has no legal or equitable interest in the real property. *Winter Park Devil's Thumb Inv. Co. v. BMS P'ship*, 926 P.2d 1253 (Colo. 1996).

Right of redemption distinguished from right of co-owner to pay delinquent taxes. Unlike the right of an interest holder to redeem, the right granted to certain co-owners to pay delinquent taxes under § 38-41-110 does not result in issuance of a redemption certificate or acquisition of an interest in the delinquent co-owner's estate. Rather, the paying co-owner is granted the right to foreclose the lien for unpaid taxes. *Notch Mountain Corp. v. Elliott*, 898 P.2d 550 (Colo. 1995).

Applied in *Harrison v. City & County of Denver*, 102 Colo. 98, 76 P.2d 1110 (1938); *French v. Golston*, 105 Colo. 578, 100 P.2d 581 (1940); *Eshe v. Clough*, 116 Colo. 266, 179 P.2d 979 (1947); *Boyle v. Culp*, 159 Colo. 423, 412 P.2d 543 (1966).

39-12-104. Redemption of real property of person under disability. (1) When the owner of real property for which a tax deed was issued under the provisions of article 11 of this title as a result of delinquent taxes is under legal disability at the time of execution and delivery of a tax deed therefor, such person shall have the right to make redemption of such property at any time within nine years from the date of the recording of such tax deed. In the event that the disability of such person is removed or ceases within such nine-year period, such redemption must be asserted and take place within a period of not more than two years after the removal or cessation of such legal disability. All redemptions under this section shall take place within nine years of the recording of the tax deed, irrespective of

the time that such disability was removed or ceased.

(2) In order to make such redemption, such owner, or some person in his behalf, shall pay to the treasurer the sum for which the tax lien on such real property was sold, and the cost of the tax deed and the recording of the same, with interest thereon from the date of such sale at the rate of fifteen percent per annum, and all other taxes, costs, and charges which remain unpaid on such real property at the time of making such redemption, levied or accrued thereon subsequent to the assessment date of the taxes for which the tax lien was sold, and all other taxes levied subsequent to the date of such sale, which have been paid by the person to whom the tax lien on said real property was sold, or by any other person claiming under him, with interest thereon at the rate of fifteen percent per annum from the date of such payment, insofar as such payments can be ascertained from the books and records in the office of such treasurer. If the person to whom the tax lien on such real property was sold, or any other person claiming under him, has made improvements, the person redeeming said real property shall pay the then present value of such improvements. The improvements shall be appraised by three disinterested persons appointed by the board of county commissioners. For all the money so paid, the treasurer shall give a certificate of redemption to the persons making such payment. From the time of making the redemption, the deed given upon the same shall be void as against such owner. In the event a redemption is not made within the periods of time provided for in this section, all rights of redemption shall cease and be forever barred as to all persons.

Source: L. 64: R&RE, p. 745, § 1. C.R.S. 1963: § 137-12-4. L. 85: Entire section amended, p. 1248, § 35, effective July 1.

ANNOTATION

Law reviews. For article, "Curative Statutes of Colorado Respecting Titles to Real Estate", see 26 Dicta 321 (1949). For article, "Summary of Denver Bar-Sponsored Bills Passed by General Assembly", see 28 Dicta 173 (1951). For

article, "Due Process in Involuntary Civil Commitment and Incompetency Adjudication Proceedings: Where Does Colorado Stand?", see 46 Den. L.J. 516 (1969).

39-12-105. Certificate of redemption. (1) Upon application of any party to redeem any real property for which a tax lien was sold or a tax deed was issued under the provisions of article 11 of this title, and being satisfied that such party has a right to redeem the same, and upon the payment of the proper amount, the treasurer shall issue to such party a certificate of redemption, describing the tract redeemed as in the certificate of sale and giving the date of redemption, the amount paid, and by whom redeemed and shall make the proper entries in the book of sales in the treasurer's office.

(2) For each certificate so delivered, the treasurer shall be entitled to a fee as provided in section 30-1-102, C.R.S.

Source: L. 64: R&RE, p. 746, § 1. C.R.S. 1963: § 137-12-5. L. 69: p. 1123, § 4. L. 71: p. 330, § 13. L. 75: (2) amended, p. 1480, § 7, effective July 1. L. 85: (1) amended, p. 1249, § 36, effective July 1. L. 96: (1) amended, p. 1393, § 15, effective July 1.

39-12-106. Entry by county clerk and recorder of redemption certificate. (Repealed)

Source: L. 64: R&RE, p. 746, § 1. C.R.S. 1963: § 137-12-6. L. 85: Entire section amended, p. 1249, § 37, effective July 1. L. 96: Entire section repealed, p. 1395, § 16, effective July 1.

39-12-107. Fee for entering certificate. (Repealed)

Source: L. 64: R&RE, p. 747, § 1. C.R.S. 1963: § 137-12-7. L. 83: Entire section amended, p. 1231, § 21, effective July 1. L. 96: Entire section repealed, p. 1395, § 17, effective July 1.

39-12-108. Payment of redemption money. All moneys received by the treasurer for the redemption of lands under the provisions of section 39-12-104 shall be paid over to the person to whom the tax lien on such land was sold or a tax deed was issued, or those claiming under him, on his deliverance to the treasurer, for the use of the person redeeming the same, a quitclaim deed of all the title to such land acquired under the sale, duly executed and acknowledged.

Source: L. 64: R&RE, p. 747, § 1. C.R.S. 1963: § 137-12-8. L. 85: Entire section amended, p. 1250, § 38, effective July 1.

39-12-109. Payment upon surrender of tax certificate. On demand of any person entitled to redemption money in his hands, the treasurer shall pay the same to any such person, upon his surrendering to him the tax certificate to such land or lot as has been redeemed. If only a portion of the land or lots described in the tax certificate has been redeemed, the treasurer shall endorse on such certificate the portion redeemed and the amount of money paid to each person and shall take a receipt therefor.

Source: L. 64: R&RE, p. 747, § 1. C.R.S. 1963: § 137-12-9.

ANNOTATION

Annotator's note. The following annotations include cases decided under this section as it existed prior to its 1964 repeal and reenactment.

Section is applicable to property sold for special municipal improvement taxes. House v. Bd. of Comm'rs, 89 Colo. 196, 300 P. 998 (1931).

County treasurer is not entitled to a commission on money paid into his hands for the redemption of land sold to individuals for delinquent taxes nor to any fee for entering on his books an assignment of a certificate of purchase. Mitchell v. Wheeler, 20 Colo. App. 159, 77 P. 361 (1904).

39-12-110. Payment when certificate lost. If there is a loss or wrongful detention of such certificate and the land therein described has been redeemed, the owner thereof may exhibit to the treasurer evidence of such loss or detention, and, upon his making the same to appear satisfactory to the treasurer and upon his executing a bond with sufficient surety that he will refund such redemption money, with twenty-five percent per annum interest thereon, if any person thereafter shows his right thereto, the treasurer shall pay such redemption money to the person so executing such bond.

Source: L. 64: R&RE, p. 747, § 1. C.R.S. 1963: § 137-12-10.

39-12-111. Land wrongfully sold - repayment. (1) When, by mistake or error of the treasurer, county clerk and recorder, or assessor or from double assessment, a tax lien has been sold on land upon which no tax was due at the time, the county shall reimburse the purchaser in the amount paid by him in connection with the purchase of the tax lien on such land, together with interest from the date of purchase at the rate which is determined as provided in this section. Reimbursement shall be made from the various funds to which the tax was originally distributed; except that interest shall be paid from the county general fund. The treasurer, county clerk and recorder, or assessor, as the case may be, and his sureties on his official bond shall be liable to the county for such amounts reimbursed as a result of sales made only through willful misconduct.

(2) (a) The annual rate of interest shall be two percentage points above the discount rate, which discount rate shall be the rate of interest a commercial bank pays to the federal

reserve bank of Kansas City using a government bond or other eligible paper as security, and shall be rounded to the nearest full percent.

(b) Notwithstanding any other provision of this subsection (2), the rate of interest shall be no lower than eight percent per annum compounded annually.

(3) The commissioner of banking shall establish the annual rate of interest based upon the computation specified in subsection (2) of this section. Such annual rate of interest shall be so established as of September 1, 1981, to become effective October 1, 1981. Thereafter, on September 1 of each year, the annual rate of interest shall be established in the same manner, to become effective on October 1 of the same year.

Source: L. 64: R&RE, p. 747, § 1. C.R.S. 1963: § 137-12-11. L. 67: p. 951, § 24. L. 69: p. 1128, § 1. L. 81: Entire section amended, p. 1862, § 2, effective September 1. L. 85: (1) amended, p. 1250, § 39, effective July 1. L. 88: (2) amended, p. 1294, § 28, effective May 23.

ANNOTATION

Annotator's note. The following annotations include cases decided under this section as it existed prior to its 1964 repeal and reenactment.

"Assessor" defined. The word "assessor" in subsection (1) means the assessing power. Bd. of Comm'rs v. Floaten, 66 Colo. 540, 181 P. 122 (1919).

Nothing in this article limits its intentment to general taxes; the word "tax" may include a special improvement tax as well as a general tax. House v. Bd. of Comm'rs, 89 Colo. 196, 300 P. 998 (1931).

Purchaser at tax sale buys at his peril in absence of special statute. Bd. of County Comm'rs v. Lavington, 91 Colo. 252, 14 P.2d 493 (1932).

Counties liable where property not subject to taxation. Counties are not liable for void sales except where the property was not subject to taxation, or, by reason of a double assessment, no tax was due. Elder v. Bd. of County Comm'rs, 33 Colo. 475, 81 P. 244 (1905).

Where property erroneously sold for special municipal improvement tax. Where the

property of a railway company is erroneously sold for a special municipal improvement tax, the county is held liable for a return of the purchase price, notwithstanding the fact that the money received has been turned over to the municipal corporation. House v. Bd. of Comm'rs, 89 Colo. 196, 300 P. 998 (1931).

Assignee of purchaser may sue county. The assignment of a tax sale certificate carries with it and vests in the assignee all the rights of the original purchaser. Where the original purchaser had a right of action against the county to recover the purchase money, the same right vests in the assignee without a specific assignment of the right of action. Bd. of Comm'rs v. Whelen, 28 Colo. 435, 65 P. 38 (1901).

Applied in Larimer County v. Nat'l State Bank, 11 Colo. 564, 19 P. 537 (1888); **Richardson v. City of Denver,** 17 Colo. 398, 30 P. 333 (1892); **Bd. of Comm'rs v. Yingling,** 14 Colo. App. 449, 60 P. 582 (1900).

39-12-112. Allowance for erroneous assessments. The state treasurer shall allow each treasurer to take credit for the amount of state tax that may have been refunded to the taxpayer as double or erroneous assessments or refunded to the purchaser of a tax lien on real estate which lien was erroneously sold.

Source: L. 64: R&RE, p. 747, § 1. C.R.S. 1963: § 137-12-12. L. 85: Entire section amended, p. 1250, § 40, effective July 1.

39-12-113. Redemption of proportionate interest. (1) Any person who has or claims an interest in or a lien upon all or any part of any undivided or divided estate or interest in any piece or parcel of land or lot for which a tax lien was sold pursuant to article 11 of this title may redeem such undivided or divided estate or interest by paying to the treasurer his proportionate part of the amount required to redeem the whole. In such case the treasurer shall issue to such party a certificate of redemption for his interest in such land or lot, as provided by law.

(2) In the event that the treasurer cannot definitely ascertain the amount required to redeem the portion sought to be redeemed, he shall request the assessor to determine the

valuation for assessment on such portion sought to be redeemed as of the original assessment date for the tax upon which the sale of the tax lien was based. Such assessor shall furnish such valuation for assessment to the treasurer forthwith. The treasurer shall thereupon ascertain such proportionate redemption amount as that amount which bears the same proportion to the amount required to redeem the entire piece or parcel of land or lot for which a tax lien was sold as such valuation for assessment so furnished bears to the original valuation for assessment of the entire piece or parcel of land or lot for which a tax lien was sold.

Source: L. 64: R&RE, p. 748, § 1. C.R.S. 1963: § 137-12-13. L. 85: Entire section amended, p. 1251, § 41, effective July 1.

ANNOTATION

Annotator’s note. The following annotations include cases decided under this section as it existed prior to its 1964 repeal and reenactment.
Tenant in common may pay tax upon share of land. A tenant in common of lands may, under subsection (1), pay the tax upon his share thereof, though the tax is assessed upon the whole estate, and he may redeem his interest from a previous tax sale of the whole. *Hallett v. Alexander*, 50 Colo. 37, 114 P. 490 (1911).
A tenant need not discharge tax upon cotenant’s interest. A tenant in common is under no necessity to discharge the tax upon the inter-

est of his cotenant and will not be allowed a lien thereon for such payment made without the request of the cotenant. *Hallett v. Alexander*, 50 Colo. 37, 114 P. 490 (1911).
Section inapplicable to undivided interest separately assessed and sold. This section has no applicability where an undivided interest has been separately listed, assessed, and sold; to effectuate a redemption thereof, the owner of the undivided interest is obliged to pay the entire redemption money upon that interest. *Garbanati v. Patterson*, 37 Colo. 230, 85 P. 845 (1906).

Conveyancing and Evidence of Title

ARTICLE 13

Documentary Fee on Conveyances
of Real Property

39-13-101.	Legislative declaration.		umentary fee paid.
39-13-102.	Documentary fee imposed -	39-13-106.	Unlawful acts - penalty.
	amount - to whom payable.	39-13-107.	Assessor to compile continu-
39-13-103.	Evidence of payment of fee.		ing record.
39-13-104.	Exemptions.	39-13-108.	Disposition of fees.
39-13-105.	No deed recorded unless doc-		

39-13-101. Legislative declaration. (1) The general assembly declares that, in enacting laws relating to the general property tax, it has provided that certain property in each county of the state shall be appraised and the actual value thereof determined by the assessor and that one of the several factors to be considered by him in determining the actual value of any property shall be “comparison with other properties of known or recognized value”.
(2) It further declares that such comparison may be best effected if there is available to the assessor a continuing record of the consideration paid or to be paid by purchasers of real property evidenced, prior to recording, on the document conveying title to such property and recorded in the office of the county clerk and recorder in the several counties of the state in the manner provided by law and that this article is enacted to provide a means of developing such continuing record and making such record available for use primarily by assessors.

Source: L. 67: p. 942, § 1. C.R.S. 1963: § 137-13-1.

39-13-102. Documentary fee imposed - amount - to whom payable. (1) There is imposed and shall be paid, by every person offering for recording in the office of the county clerk and recorder any deed or instrument in writing wherein or whereby title to real property situated in this state is granted or conveyed, a fee, referred to in this article as "documentary fee", measured by the consideration paid or to be paid for such grant or conveyance, which documentary fee shall be in addition to any other fee fixed by law for the recording of such deed or instrument in writing.

(2) The amount of documentary fee payable in each case shall be as follows:

(a) When there is no consideration or when the total consideration paid by the purchaser, inclusive of the amount of any lien or encumbrance against the real property granted or conveyed and all charges and expenses required to be paid for the making of such grant or conveyance is five hundred dollars or less, no documentary fee shall be payable.

(b) When the total consideration paid by the purchaser, inclusive of the amount of any lien or encumbrance against the real property granted or conveyed and all charges and expenses required to be paid for the making of such grant or conveyance exceeds five hundred dollars, the documentary fee payable shall be computed at the rate of one cent for each one hundred dollars, or major fraction thereof, of such consideration.

(3) All documentary fees shall be payable to and collected by the county clerk and recorder.

(4) In those cases in which real property located in two or more counties is granted or conveyed in a single transaction, each county clerk and recorder shall collect a portion of the total documentary fee referred to in subsection (2) of this section in the same ratio that the consideration fairly attributable to the part of such property located in his county bears to the total consideration. The allocation of the total consideration between counties is to be made by the person offering such deed or instrument in writing for recording.

(5) (a) In determining the amount of consideration paid for the grant or conveyance of residential real property, inclusive of liens, charges, and expenses, the total amount of the sales price to the purchaser shall be deemed to be paid for the grant or conveyance of real property unless evidence of the separate consideration paid for personal property is submitted as shown on the contract of sale or the closing or settlement documents on the grant or conveyance or unless evidence of such separate consideration is shown on the declaration filed pursuant to the provisions of section 39-14-102.

(b) In determining the amount of consideration paid for the grant or conveyance of commercial or industrial real property, inclusive of liens, charges, and expenses, the total amount of the sales price to the purchaser shall be deemed to be paid for the grant or conveyance of real property unless evidence of the separate consideration paid for personal property is submitted as shown on the purchaser's use tax return as filed with the department of revenue or unless evidence of such separate consideration is shown on the declaration filed pursuant to the provisions of section 39-14-102.

(c) Any such evidence submitted under paragraph (a) or (b) of this subsection (5) shall not be recorded or filed by the county clerk and recorder and shall not be subject to public inspection but shall be sent to the county assessor. Such evidence shall be used by the assessor as required by section 39-13-107 but shall be kept confidential and shall not be subject to public inspection.

Source: L. 67: p. 942, § 1. C.R.S. 1963: § 137-13-2. L. 68: p. 33, § 4. L. 84: (5) added, p. 1004, § 1, effective July 1; (2)(a) and (2)(b) amended, p. 1004, § 1, effective January 1, 1985. L. 89: (5)(a) and (5)(b) amended, p. 1462, § 21, effective July 1.

39-13-103. Evidence of payment of fee. Each county clerk and recorder shall evidence payment of the documentary fee imposed in this article by imprinting, typing, stamping, or writing in ink on the margin or other blank portion of every document to which such fee applies the words "State Documentary Fee", the amount of documentary fee paid, and the date upon which paid, which impression or notation shall be made on such document before it is recorded.

Source: L. 67: p. 943, § 1. C.R.S. 1963: § 137-13-3. L. 68: p. 32, § 1.

39-13-104. Exemptions. (1) The documentary fee imposed in this article shall not apply to:

(a) Any deed wherein the United States or any agency or instrumentality thereof or the state of Colorado or any political subdivision thereof is either the grantor or the grantee; except that, at the time such entity offers a deed for recording in the office of the county clerk and recorder, it shall file an affidavit with the clerk stating the consideration paid or to be paid for such grant or conveyance. If the entity imprints, types, stamps, or writes in ink on the margin or other blank portion of the document the consideration paid or to be paid for such grant or conveyance, it shall be deemed to satisfy the requirements of an affidavit.

(b) Any deed granting or conveying title to real property in consequence of a gift of such property;

(c) Any public trustee's deed executed pursuant to the provisions of section 38-38-501, C.R.S.;

(d) Any treasurer's deed executed in accordance with the provisions of article 11 of this title;

(e) Any sheriff's deed;

(f) Any instrument which confirms or corrects a deed previously recorded;

(g) Any deed granting or conveying title to cemetery lots;

(h) Any executory contract for the sale of real property of less than three years' duration under which the vendee is entitled to or does take possession thereof without acquiring title thereto nor to any assignment or cancellation of any such contract;

(i) Any lease of real property or assignment or transfer of an interest in any such lease;

(j) Any document given to secure payment of an indebtedness;

(k) Any document granting or conveying a future interest in real property;

(l) Any decree or order of a court of record determining or vesting title;

(m) Any document necessary to transfer title to property as a result of the death of an owner thereof;

(n) Repealed.

(o) Any rights-of-way and easements.

(2) Exemption from payment of the documentary fee imposed in this article must be claimed at the time a deed or instrument is offered for recording.

Source: L. 67: p. 943, § 1. C.R.S. 1963: § 137-13-4. L. 68: p. 32, § 2. L. 85: (1)(n) repealed, p. 1214, § 12, effective May 9. L. 89: (1)(a) amended, p. 1496, § 1, effective March 15. L. 91: (1)(c) amended, p. 1925, § 56, effective June 1.

39-13-105. No deed recorded unless documentary fee paid. No deed or instrument in writing to which a documentary fee applies shall be recorded until and unless the documentary fee payable thereon has been paid and evidence of its payment has been imprinted, typed, stamped, or written in ink thereon as provided in section 39-13-103. Any county clerk and recorder who willfully and knowingly records any document to which a documentary fee applies without having first collected such fee and evidenced payment thereof as provided in this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of fifty dollars.

Source: L. 67: p. 944, § 1. C.R.S. 1963: § 137-13-5. L. 68: p. 32, § 3.

39-13-106. Unlawful acts - penalty. (1) It is unlawful for any person to commit the following acts:

(a) To fail or refuse to pay the documentary fee imposed in this article when such payment is required;

(b) To willfully and knowingly recite to the county clerk and recorder a consideration greater or less than the actual consideration referred to in section 39-13-102 (2) (a) and (2)

(b) in connection with the granting or conveying of title to real property by any deed or instrument in writing to which the documentary fee applies.

(2) Any person who commits either of the acts set forth in subsection (1) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars, or by imprisonment in the county jail for not less than ten days nor more than three months, or by both such fine and imprisonment.

Source: L. 67: p. 944, § 1. C.R.S. 1963: § 137-13-6.

39-13-107. Assessor to compile continuing record. It is the duty of each assessor to examine at least once each year all documents recorded in his county upon which a documentary fee has been paid and to determine in each case the consideration upon which such fee was computed and paid. He shall compile and maintain in his office a continuing record of all such considerations to assist him in appraising property and determining the actual value thereof as required by the provisions of section 39-1-103 (5).

Source: L. 67: p. 944, § 1. C.R.S. 1963: § 137-13-7.

39-13-108. Disposition of fees. All documentary fees collected by the county clerk and recorder shall be deposited with the treasurer at least once each month and credited by him in the manner prescribed by law.

Source: L. 67: p. 944, § 1. C.R.S. 1963: § 137-13-8.

ARTICLE 14

Real Property Transfer Information

39-14-101.	Definitions.	39-14-103.	Manufactured home declara-
39-14-102.	Filing of declaration - infor-		tion - information available
	mation available to county		to county assessor.
	assessor.		

39-14-101. Definitions. As used in this article, unless the context otherwise requires:

(1) “Authorized agent” shall have the same meaning as set forth in section 38-29-102 (1), C.R.S.

(1.5) “Conveyance” means any transfer of a real property interest or manufactured home for some consideration in money or money’s worth.

(2) “Conveyance document” means any document upon which a documentary fee is imposed pursuant to section 39-13-102.

(3) “Declaration” means a form prescribed by the property tax administrator, and approved by the state board of equalization after review by the advisory committee to the property tax administrator as provided in section 39-9-103 (10), that contains information to assist the assessor in determining the value of real property and manufactured homes required to be furnished under this article pursuant to section 39-14-102 or 39-14-103.

(4) “Manufactured home” shall have the same meaning as set forth in section 39-1-102 (7.8).

(5) “Manufactured home title application” means an application for a new certificate of title in accordance with the provisions of part 1 of article 29 of title 38, C.R.S., that is made after a sale or transfer described in section 38-29-112 (1) or 38-29-114 (1), C.R.S.

(6) “Verification of application form” shall have the same meaning as set forth in section 38-29-102 (13), C.R.S.

Source: L. 89: Entire article added, p. 1460, § 20, effective July 1. **L. 96:** (3) amended, p. 949, § 3, effective July 1. **L. 2008:** (1) and (3) amended and (1.5), (4), (5), and (6) added, p. 452, § 11, effective July 1. **L. 2009:** (1.5) and (4) amended, (SB 09-040), ch. 9, p. 71, § 13, effective July 1.

39-14-102. Filing of declaration - information available to county assessor.

(1) (a) On or after July 1, 1989, any conveyance document presented for recordation shall be accompanied by a declaration prescribed by the property tax administrator. Said declaration shall be completed and signed by either the grantor or the grantee.

(b) (I) If the declaration required in this subsection (1) does not accompany a conveyance document at the time such conveyance document is presented for recordation, the county clerk and recorder shall promptly record the conveyance document and shall notify the county assessor that such conveyance document was not accompanied by such declaration.

(II) Upon receiving such notice from the county clerk and recorder pursuant to subparagraph (I) of this paragraph (b), the county assessor shall send written notice to the grantee specified in such conveyance document that the grantee shall provide the declaration to the county assessor within thirty days of the date the notice was mailed. If the grantee fails to provide such declaration within thirty days after the date the notice was mailed, the county assessor may impose upon such grantee a penalty of twenty-five dollars or a penalty equal to twenty-five one-thousandths of one percent of the sale price of the real property transferred pursuant to the conveyance document, whichever amount is greater. In each subsequent year in which the grantee fails to file the declaration, the assessor may impose said specified penalty unless the real property has been subsequently conveyed. Any penalty imposed pursuant to this subparagraph (II) shall be a fee of the office of the county assessor.

(III) Any unpaid penalties which were imposed pursuant to subparagraph (II) of this paragraph (b) shall be certified to the county treasurer by January 1 of each year and shall be included in the statement sent to the grantee pursuant to section 39-10-103 for property taxes levied against the real property.

(c) The county clerk and recorder shall not record or file any declaration made pursuant to the provisions of this section; however, the county clerk and recorder shall enter upon such declaration the date of recordation and reception number of the conveyance document presented for recordation. The county clerk and recorder shall transmit any declaration made pursuant to the provisions of this section to the county assessor. The county assessor shall make any declaration made pursuant to the provisions of this section available for inspection by any taxpayer who was the grantee specified in the conveyance document which such declaration accompanied or who filed such declaration, the person conducting any valuation for assessment study pursuant to section 39-1-104 (16) and his employees, and the property tax administrator and his employees.

(2) No declaration made pursuant to the provisions of this section which accompanies a conveyance document or is filed separately shall be deemed to provide constructive notice of information contained therein for purposes of article 35 of title 38, C.R.S.

(3) (Deleted by amendment, L. 96, p. 949, § 4, effective July 1, 1996.)

(4) Each county assessor shall maintain a data bank consisting of information which has been derived from the declarations filed pursuant to the provisions of this article. Such information shall be used to properly adjust sales for sales ratio analysis and for determining the actual value of the real property transferred and the actual value of other real property, as well as other purposes deemed appropriate by the county assessor.

Source: L. 89: Entire article added, p. 1460, § 20, effective July 1. **L. 90:** (1)(c) amended, p. 1698, § 25, effective June 9. **L. 96:** (1)(a), (1)(b)(II), and (3) amended, p. 949, § 4, effective July 1.

39-14-103. Manufactured home declaration - information available to county assessor. (1) (a) On or after July 1, 2008, but before July 1, 2009, any manufactured home title application that is submitted to an authorized agent shall be accompanied by a declaration prescribed by the property tax administrator. On or after July 1, 2009, upon conveyance of any manufactured home, a new title application that is submitted to an authorized agent shall be accompanied by a declaration prescribed by the property tax administrator. The declaration shall be completed and signed by the purchaser or transferee.

(b) (I) If the declaration required in this subsection (1) does not accompany a manufactured home title application at the time such application is presented to the authorized agent, the authorized agent shall notify the county assessor that such application was not accompanied by such declaration.

(II) Upon receiving the notice from the authorized agent pursuant to subparagraph (I) of this paragraph (b), the county assessor shall send written notice to the purchaser or transferee specified in the manufactured home title application that the purchaser or transferee shall provide the declaration to the county assessor within thirty days after the date the notice was mailed. If the purchaser or transferee fails to provide such declaration within thirty days after the date the notice was mailed, the county assessor may impose upon such purchaser or transferee a penalty of twenty-five dollars or a penalty equal to twenty-five one-thousandths of one percent of the sale price of the manufactured home, whichever amount is greater. In each subsequent year in which the purchaser or transferee fails to file the declaration, the assessor may impose said specified penalty unless the manufactured home has been subsequently conveyed. Any penalty imposed pursuant to this subparagraph (II) shall be a fee of the office of the county assessor.

(III) Any unpaid penalties that were imposed pursuant to subparagraph (II) of this paragraph (b) shall be certified to the county treasurer by January 1 of each year and shall be included in the statement sent to the purchaser or transferee pursuant to section 39-10-103 for property taxes levied against the manufactured home.

(c) The authorized agent shall not record or file any declaration made pursuant to the provisions of this section; however, the authorized agent shall enter upon such declaration the date of recordation and reception number of the verification of application form related to the manufactured home title application. The county clerk and recorder shall transmit any declaration made pursuant to the provisions of this section to the county assessor. The county assessor shall make any declaration made pursuant to the provisions of this section available for inspection by any taxpayer who was specified in the manufactured home title application or who filed such declaration, the person conducting any valuation for assessment study pursuant to section 39-1-104 (16) and his or her employees, and the property tax administrator and his or her employees.

(2) No declaration made pursuant to this section that accompanies a manufactured home title application or is filed separately shall be deemed to provide constructive notice of information contained therein for purposes of article 35 of title 38, C.R.S.

(3) Each county assessor shall maintain a data bank consisting of information that has been derived from the declarations filed pursuant to this section. Such information shall be used to properly adjust sales for sales ratio analysis and for determining the actual value of the manufactured home transferred and the actual value of other manufactured homes, as well as other purposes deemed appropriate by the county assessor.

(4) A manufactured home that has become real property in accordance with the provisions of part 1 of article 29 of title 38, C.R.S., shall be subject to the provisions of section 39-14-102.

Source: L. 2008: Entire section added, p. 453, § 12, effective July 1. **L. 2009:** (1)(a) amended, (SB 09-040), ch. 9, p. 71, § 14, effective July 1.

SPECIFIC TAXES

General and Administrative

ARTICLE 20

Enforcement of Tax Liens

39-20-101.	Not applicable to general or inheritance taxes.	39-20-105.	ject to lien. Certificate of discharge to
39-20-102.	Civil action to enforce lien.		part of property.
39-20-103.	When holder of prior lien may file action.	39-20-106.	How values determined.
39-20-104.	Certificate of discharge sub-	39-20-107.	Certificate of release conclusive.

39-20-101. Not applicable to general or inheritance taxes. The provisions of this article shall not apply to liens for general taxes or inheritance taxes.

Source: L. 43: p. 509, § 7. CSA: C. 142, § 280(7). CRS 53: § 138-7-1. C.R.S. 1963: § 138-6-1.

ANNOTATION

Law reviews. For article, "Trusts and Estates", see 30 Dicta 435 (1953).

39-20-102. Civil action to enforce lien. In any case where there has been a refusal or neglect to pay any tax due the state of Colorado and a statement or notice has been filed which, under law, creates a lien upon any real property for such tax, the executive director of the department of revenue may cause a civil action to be filed in the district court of the county in which is situated any real property which is subject to said lien to enforce the lien of the state of Colorado for such tax upon the real property situated in that county or in any other county in the state which may be subject to such lien or to subject any real property or any right, title, or interest in real property to the payment of such tax. The court shall adjudicate all matters involved in such action and may decree a sale of the real property and distribute the proceeds of such sale according to the findings of the court in respect to the interest of the parties and of the state of Colorado. The proceedings in such action and the manner of sale, the period for and manner of redemption from such sale, and the execution of a deed of conveyance shall be in accordance with the law and practice relating to foreclosures of mortgages upon real property. In any such action, the court may appoint a receiver of the real property involved in such action if equity so requires.

Source: L. 43: p. 507, § 1. CSA: C. 142, § 280(1). CRS 53: § 138-7-2. C.R.S. 1963: § 138-6-2.

Cross references: For foreclosure of mortgages and redemption procedures, see articles 38, 39, and 40 of title 38; for appointment and qualification of receivers, see C.R.C.P. 66.

39-20-103. When holder of prior lien may file action. (1) A person having a lien upon or any interest in any real estate referred to in section 39-20-102 under or by virtue of any instrument that has been duly filed of record, in the office of the county clerk and recorder of the county where the real estate is located, prior to the filing of the statement or notice that created a lien upon such real property for taxes or any person purchasing such real estate at a sale to satisfy such prior lien or interest may make written request to the executive director of the department of revenue to file a civil action as provided in section 39-20-102. If no civil action has been commenced as provided in section 39-20-102 within

two months after receipt by the executive director of the written request, the person or purchaser may file a civil action in the district court of any county where any such real property is situated asking for a final determination of all claims of the state of Colorado to and all liens of the state of Colorado upon the real estate in question. Service of the process in such action upon the state of Colorado shall be made upon the executive director of the department of revenue or upon one of his or her deputies. Permission is given for the state of Colorado to be so sued. The court shall in such civil action adjudicate the matters involved therein in the same manner as in the case of civil actions filed under section 39-20-102.

(2) Except for liens with priority pursuant to section 39-22-604, a lien for taxes due the state of Colorado may be divested by a foreclosure pursuant to article 38 of title 38, C.R.S., in the same manner as other lienors with liens upon the property being foreclosed. The state of Colorado shall have the same redemption rights as other lienors in such a foreclosure. A person foreclosing a deed of trust or other lien with priority over a lien for taxes due the state of Colorado in a foreclosure under article 38 of title 38, C.R.S., shall not be required to make a written request or to commence a civil action pursuant to subsection (1) of this section.

Source: L. 43: p. 507, § 2. CSA: C. 142, § 280(2). CRS 53: § 138-7-3. C.R.S. 1963: § 138-6-3. L. 2006: Entire section amended, p. 1479, § 34, effective July 1.

39-20-104. Certificate of discharge subject to lien. If any property, real or personal, under the law, is subject to a lien for the payment of any tax due the state of Colorado, the executive director of the department of revenue may issue a certificate of discharge of any part of the property subject to the lien if he finds that the fair market value of that part of such property remaining subject to the lien is at least double the amount of the liability remaining unsatisfied in respect to such tax and the amount of all prior liens upon such property.

Source: L. 43: p. 508, § 3. CSA: C. 142, § 280(3). CRS 53: § 138-7-4. C.R.S. 1963: § 138-6-4.

39-20-105. Certificate of discharge to part of property. If any property, real or personal, under the law, is subject to a lien for the payment of any tax due the state of Colorado, the executive director of the department of revenue may issue a certificate of discharge of any part of the property subject to the lien if there is paid over to the executive director, in part satisfaction of the liability in respect to such tax, an amount determined by the executive director, which shall not be less than the value, as determined by him, of the interest of the state of Colorado in the part to be so discharged.

Source: L. 43: p. 508, § 4. CSA: C. 142, § 280(4). CRS 53: § 138-7-5. C.R.S. 1963: § 138-6-5.

39-20-106. How values determined. In determining the values mentioned in section 39-20-105, the executive director of the department of revenue shall give consideration to the fair market value of the part to be so discharged and to such lien thereon as has priority to the lien of the state of Colorado.

Source: L. 43: p. 508, § 5. CSA: C. 142, § 280(5). CRS 53: § 138-7-6. C.R.S. 1963: § 138-6-6.

39-20-107. Certificate of release conclusive. A certificate of release or of partial discharge issued under section 39-20-104 shall be held conclusive that the lien of the state of Colorado upon the property released therein is extinguished.

Source: L. 43: p. 509, § 6. CSA: C. 142, § 280(6). CRS 53: § 138-7-7. C.R.S. 1963: § 138-6-7.

ARTICLE 21**Procedure and Administration**

Law reviews: For article, "Taxation", which discusses Tenth Circuit decisions dealing with tax law, see 61 Den. L.J. 379 (1984).

PART 1**GENERAL PROVISIONS**

- 39-21-101. Definitions.
- 39-21-102. Scope.
- 39-21-103. Hearings.
- 39-21-104. Rejection of claims.
- 39-21-104.5. Frivolous submissions.
- 39-21-105. Appeals.
- 39-21-105.5. Notice - first-class mail.
- 39-21-106. Compromise.
- 39-21-107. Limitations.
- 39-21-108. Refunds.
- 39-21-109. Interest on underpayment, non-payment, or extensions of time for payment of tax.
- 39-21-110. Interest on overpayments.
- 39-21-110.5. Rate of interest to be fixed.
- 39-21-111. Jeopardy assessment and demands.
- 39-21-112. Duties and powers of executive director.
- 39-21-113. Reports and returns - repeal.
- 39-21-114. Methods of enforcing collection.
- 39-21-115. Reciprocity with other states for collection of taxes provided.
- 39-21-116. Closing agreements.
- 39-21-116.5. Penalties.

- 39-21-117. Saving clause.
- 39-21-118. Criminal penalties.
- 39-21-119. Filing with executive director - when deemed to have been made.
- 39-21-120. Signature and filing alternatives for tax returns.
- 39-21-121. Unclaimed property offset.
- 39-21-122. Revenue impact of 2010 tax legislation - tracking by department.

PART 2**TAX AMNESTY PROGRAM**

- 39-21-201. Program established.
- 39-21-202. Tax amnesty cash fund - creation - uses - repeal.

PART 3**TAX PROFILE AND EXPENDITURE REPORT**

- 39-21-301. Legislative declaration.
- 39-21-302. Definitions.
- 39-21-303. Tax profile and expenditure report.
- 39-21-304. Tax expenditure - statement of intended purpose.

PART 1**GENERAL PROVISIONS**

39-21-101. Definitions. As used in this article, unless the context otherwise requires:

- (1) "Department" means the department of revenue.
- (2) "Executive director" or "executive director of the department of revenue" means the executive director of the department of revenue and includes the head of any group, division, or subordinate department, as appointed in accordance with article 35 of title 24, C.R.S., whenever the executive director specifically authorizes the group, division, or subordinate department head to act on his or her behalf.
- (3) "Person" includes any individual, firm, corporation, partnership, limited liability company, joint venture, estate, trust, or group or combination acting as a unit.
- (4) "Taxpayer" includes a person against whom a deficiency is being asserted, whether or not he has paid any of the tax in issue prior thereto.

Source: **L. 65:** p. 1148, § 2. **C.R.S. 1963:** § 138-9-15. **L. 76:** (1) amended and (1.5) added, p. 777, § 2, effective July 1. **L. 77:** Entire section R&RE, p. 1765, § 1, effective June 19. **L. 90:** (3) amended, p. 450, § 28, effective April 18. **L. 93:** (2) amended, p. 1239, § 13, effective July 1. **L. 2000:** (2) amended, p. 1639, § 18, effective June 1.

ANNOTATION

Applied in *Toncray v. Dolan*, 197 Colo. 382, 593 P.2d 956 (1979).

39-21-102. Scope. (1) Unless otherwise indicated, the provisions of this article apply to the taxes and the charge on oil and gas production imposed by articles 22 to 29 of this title and article 60 of title 34, C.R.S., section 21 of article X of the state constitution, and article 3 of title 42, C.R.S.

(2) The provisions of this article apply to the taxes imposed pursuant to articles 46, 47, and 60 of title 12, C.R.S., but only to the extent that the provisions of this article are not inconsistent with the provisions of articles 46, 47, and 60 of title 12, C.R.S.

(3) Repealed.

(4) The provisions of this article apply to grants authorized pursuant to article 31 of this title to the extent that such provisions are not inconsistent with the provisions of said article 31.

Source: **L. 65:** p. 1131, § 2. **C.R.S. 1963:** § 138-9-1. **L. 72:** p. 620, § 164. **L. 77:** Entire section amended, p. 841, § 2, effective July 1; entire section amended, pp. 1766, 1852, §§ 1, 3, effective January 1, 1978. **L. 79:** Entire section amended, p. 1499, § 20, effective January 1, 1980. **L. 86:** Entire section amended, p. 1109, § 3, effective July 1. **L. 87:** Entire section amended, p. 486, § 31, effective July 1. **L. 89:** (1) amended, p. 1594, § 4, effective July 1, 1993. **L. 90:** (1) amended, p. 1721, § 1, effective May 1; (1) amended, p. 1721, § 2, effective July 1, 1993. **L. 93:** (2) amended, p. 1239, § 14, effective July 1. **L. 2001:** (3) added, p. 777, § 7, effective June 1. **L. 2004:** (4) added, p. 399, § 1, effective August 4. **L. 2005:** (1) amended, p. 911, § 13, effective June 2; (1) amended, p. 926, § 14, effective June 2. **L. 2009:** (3) repealed, (HB 09-1053), ch. 159, p. 689, § 10, effective August 5.

Editor's note: Amendments to this section by House Bill 77-1076 harmonized with Senate Bill 77-100 and Senate Bill 77-1448.

Cross references: For the legislative declaration contained in the 2005 act amending subsection (1), see section 1 of chapter 241, Session Laws of Colorado 2005.

ANNOTATION

Section 39-21-107 applicable where use taxes assessed, no return filed. It is the intent of the general assembly that § 39-21-107, rather than § 39-26-210, should be the controlling statute of limitations where use taxes are assessed but no return is filed. *Dye Constr. Co. v. Dolan*, 41 Colo. App. 293, 589 P.2d 497 (1978).

Inapplicable to violations of liquor code. The prohibition against fraud found in § 39-21-118 does not apply to violations of the liquor

code. *People v. Luciano*, 662 P.2d 480 (Colo. 1983).

The general assembly intended the controlled substances tax to be subject to the provisions of this article, and, since taxpayer failed to pursue administrative remedies set forth therein, the court was without jurisdiction to hear taxpayer's complaint. *Huff v. Tipton*, 810 P.2d 236 (Colo. App. 1991).

39-21-103. Hearings. (1) As soon as practicable after any tax return or the return showing the value of oil and gas is filed pursuant to articles 22 to 29 of this title, article 60 of title 34, or article 3 of title 42, C.R.S., the executive director shall examine it and shall determine the correct amount of tax. If the tax found due is greater than the amount theretofore assessed or paid, a notice of deficiency shall be mailed to the taxpayer by first-class mail as set forth in section 39-21-105.5.

(2) The taxpayer may request a hearing on the proposed tax by application to the executive director within thirty days of the mailing of a notice of deficiency.

(3) The request for hearing shall set forth the taxpayer's reasons for and the amount of the requested changes in the deficiency.

(3.5) If the executive director determines that a request for a hearing related to the tax set forth in part 1 of article 22 of this title is a frivolous submission and rejects the request pursuant to section 39-21-104.5, the taxpayer shall not be entitled to a hearing before the executive director and the provisions of section 39-21-104.5 shall apply.

(4) The executive director of the department of revenue shall notify the taxpayer in writing of the time and place for such hearing thirty days prior thereto. In all cases where the disputed deficiency involves gift taxes or exceeds two hundred dollars and does not involve sales and use taxes, the hearing shall be held in Denver, Colorado. If the disputed deficiency does not involve gift taxes, is two hundred dollars or less, or involves sales and use taxes regardless of the amount, the hearing may be held, at the election of the taxpayer, in the district office of the department nearest to the place where the taxpayer resides or has his principal place of business within Colorado. If the taxpayer does not reside or have a place of business in Colorado, the hearing shall be held in the city and county of Denver.

(4.5) If the taxpayer and the executive director agree that the disposition of the taxpayer's requested changes requires the resolution of a question of law arising under the United States or Colorado constitutions, the executive director shall memorialize the agreement and send the taxpayer a notice of the agreement by first-class mail as set forth in section 39-21-105.5. If a notice is sent pursuant to this subsection (4.5), a taxpayer may elect to waive a hearing pursuant to this section and appeal the notice of deficiency directly to the district court pursuant to section 39-21-105 within thirty days after the mailing of the notice.

(5) After a hearing under this section, the taxpayer shall not be entitled to a second hearing before the executive director of the department of revenue on the matters set forth in his previous request for hearing.

(6) (a) Except as provided in paragraph (b) of this subsection (6), the hearing shall be held before the executive director of the department of revenue.

(b) In cases where the disputed deficiency is more than two hundred dollars and involves an income tax, the hearing may be held before such qualified person within the department specifically authorized by the executive director to act on the executive director's behalf to hear such dispute. In cases where the disputed deficiency is two hundred dollars or less or involves a sales, use, or gift tax, the hearing may be held before such person within the department as the executive director shall designate.

(c) The executive director or the executive director's delegate is authorized to administer oaths and take testimony. At the hearing, the taxpayer may assert any facts, make any arguments, and file any briefs and affidavits the taxpayer believes pertinent to the case.

(7) In lieu of the request for hearing within the time provided by this section, the taxpayer may, at his election, file a written brief and such other written materials or documents as he deems appropriate and request that the executive director of the department of revenue reconsider the deficiency without a hearing. The executive director shall reconsider the deficiency in the same manner as if the written material submitted had been presented at a hearing pursuant to this section. The submission of written material shall be considered for all purposes the same as a request for and submission of the material at a hearing.

(8) (a) Based on the evidence presented at the hearing or filed in support of the taxpayer's contentions or after the expiration of thirty days from the mailing of the notice of deficiency, if no request for hearing or brief has been filed by the taxpayer, the executive director of the department of revenue shall make a final determination within the time specified in paragraph (b) of this subsection (8) and shall send the taxpayer a notice of final determination accompanied by notice and demand for payment by first-class mail as set forth in section 39-21-105.5.

(b) The executive director shall make a final determination within sixty days of the hearing. Such deadline may be extended:

(I) By up to an additional sixty days by mutual agreement between the executive director and the taxpayer; or

(II) By the executive director in the executive director's discretion if the final determination raises issues that require additional information or time to analyze in order to make the determination. The executive director may authorize successive extensions of a

deadline to make a particular determination; however, no individual extension authorized pursuant to this subparagraph (II) shall exceed sixty days. Prior to authorizing each extension of a deadline pursuant to this subparagraph (II), the executive director shall mail a written notice of the extension and the specific reasons therefor to the taxpayer.

(c) The executive director may modify the tax, penalty, and interest questioned at the hearing and may approve a refund; except that no additional tax shall be assessed for less than one dollar. Unless an appeal is taken as provided in section 39-21-105, the tax, together with interest thereon and penalties, if any, shall be paid within thirty days after mailing of the notice and demand for payment by the executive director.

Source: **L. 65:** p. 1131, § 2. **C.R.S. 1963:** § 138-9-2. **L. 73:** p. 1417, § 101. **L. 77:** (1), (4), and (6) amended, p. 841, § 3, effective July 1; (1) amended, pp. 1766, 1852, §§ 2, 4, effective January 1, 1978. **L. 79:** (1) amended, p. 1499, § 21, effective January 1, 1980. **L. 86:** (1) amended, p. 1110, § 4, effective July 1. **L. 89:** (1) amended, p. 1594, § 5, effective July 1, 1993. **L. 90:** (1) amended, p. 1721, § 3, effective May 1; (1) amended, p. 1722, § 4, effective July 1, 1993. **L. 96:** (1) and (8) amended, p. 163, § 1, effective July 1. **L. 2001:** (1) amended, p. 777, § 8, effective June 1. **L. 2002:** (4.5) added and (6) and (8) amended, p. 256, § 1, effective July 1. **L. 2003:** (3.5) added, p. 661, § 1, effective March 20. **L. 2009:** (1) amended, (HB 09-1053), ch. 159, p. 689, § 11, effective August 5.

Editor's note: Amendments to subsection (1) by House Bill 77-1076, Senate Bill 77-100, and Senate Bill 77-144 were harmonized.

ANNOTATION

Law reviews. For article, "Taxation", which discusses Tenth Circuit decisions dealing with the fifth amendment privilege in tax proceedings, see 61 Den. L.J. 384 (1984).

Annotator's note. Notes from *People ex rel. Dunbar v. Maytag*, 129 Colo. 316, 270 P.2d 782 (1954), decided under former § 39-25-115, which dealt with objections to the amount of gift tax, are included in the annotations to this section.

Director of revenue is vested with the full authority to determine tax liability, subject to the right of appeal to the district court, and the further right of review pursuant to the provisions of § 39-21-105. *Ray v. State*, 123 Colo. 144, 226 P.2d 804 (1950).

Decision of director final against state. After the tax liability determined hereby is paid under protest, the decision of the director of revenue is apparently final against the state, for § 39-21-105 makes available only the remedy to be pursued in the event the taxpayer is dissatisfied with the director's decision. *California Co. v. State*, 141 Colo. 288, 348 P.2d 382 (1959), appeal dismissed, 364 U.S. 285, 81 S. Ct. 37, 5 L. Ed.2d 37, reh'g denied, 364 U.S. 897, 81 S. Ct. 219, 5 L. Ed.2d 191 (1960).

Section sets forth a statutory procedure available to a donor if he is dissatisfied with the assessment or the gift tax determined by the commissioner (now executive director). *People ex rel. Dunbar v. Maytag*, 129 Colo. 316, 270 P.2d 782 (1954).

Section affords the taxpayer a plain, speedy, and adequate remedy and a full op-

portunity to be heard as to the quantum of the tax and the alleged irregularities leading up to the fixation of tax liability. *Liebhardt v. Dept. of Rev.*, 123 Colo. 369, 229 P.2d 655 (1951).

Taxpayer's sole remedy under this section. If the donor is dissatisfied with the commissioner's (now executive director's) determination of the gift tax, his sole and only remedy is under the provisions of this section. *People ex rel. Dunbar v. Maytag*, 129 Colo. 316, 270 P.2d 782 (1954).

Section provides a clear opportunity to be heard without condition. *Reed v. Dolan*, 195 Colo. 193, 577 P.2d 284 (1978).

Section is applicable only where there has been assessment and tax determination by the inheritance tax commissioner (now executive director), and the objections therein provided are limited to questions of erroneous valuation, appraisal, or objections or petitions in a court of competent jurisdiction within three months after the gift tax has been determined. *People ex rel. Dunbar v. Maytag*, 129 Colo. 316, 270 P.2d 782 (1954).

No "return" filed without information with respect to income on form. Where a Colorado income tax form contains no information with respect to income, the taxpayer has not filed a "return" within the meaning of subsection (1) and he is not within the class of persons protected by this section who are entitled to a determination of tax due after a return has been filed. *People v. Vickers*, 199 Colo. 305, 608 P.2d 808 (1980).

Failure to exhaust statutory remedies constitutes waiver. The failure to interpose objec-

tions in the manner and at the time prescribed by law, and to exhaust the statutory remedies afforded the taxpayer, constitutes a waiver of such objections. *Liebhardt v. Dept. of Rev.*, 123 Colo. 369, 229 P.2d 655 (1951).

The taxpayer's failure to pursue the proper administrative courses available to him as possible remedies bars him from later attacking the final determination and notice of tax deficiency. *Manka v. Martin*, 614 P.2d 875 (Colo. 1980), cert. denied, 450 U.S. 913, 101 S. Ct. 1354, 67 L. Ed.2d 338 (1981).

The general assembly intended the controlled substances tax to be subject to the provisions of this article, and, since taxpayer failed to pursue administrative remedies set forth therein, the court was without jurisdiction to hear taxpayer's complaint. *Huff v. Tipton*, 810 P.2d 236 (Colo. App. 1991).

Where partnership is assessed for use tax and incurs liability owing to its failure to protest liability, taxpayer who is general partner of a limited partnership is jointly and severally liable therefor. *AF Prop. v. Dept. of Rev.*, 852 P.2d 1267 (Colo. App. 1992).

When issue of material fact existed as to whether general partnership had been assessed with a use tax, trial court erred in entering motion for summary judgment in favor of individual partner on grounds that partner could not be held jointly and severally liable for deficiency owed by partnership. *AF Prop. v. Dept. of Rev.*, 852 P.2d 1267 (Colo. App. 1992).

Applied in *People v. Vesely*, 41 Colo. App. 325, 587 P.2d 802 (1978); *Montgomery Ward & Co. v. State*, Dept. of Rev., 628 P.2d 85 (1981); *Montgomery Ward & Co. v. Dept. of Rev.*, 675 P.2d 318 (Colo. App. 1983).

39-21-104. Rejection of claims. (1) Upon rejection, in whole or in part, of a claim for refund filed by a taxpayer, with respect to any tax set forth in section 39-21-103 (1), the executive director of the department of revenue shall send a notice of rejection to the taxpayer in writing by first-class mail as set forth in section 39-21-105.5; and, within thirty days from the mailing thereof, the taxpayer may request a hearing or file a brief with the executive director, except where the claim is for refund of a deficiency in taxes assessed after hearing or determination on written brief had under the provisions of section 39-21-103. Thereafter, both the taxpayer and the executive director shall proceed as provided in section 39-21-103 with respect to the hearing or determination on written brief. Upon reaching a decision upon the claim for refund after hearing had thereon or consideration of the written brief, the executive director shall send to the taxpayer, by first-class mail as set forth in section 39-21-105.5, notice of final determination of claim for refund, stating therein the grounds for allowance or rejection in whole or in part.

(2) If the executive director determines that a request for a hearing related to the tax set forth in part 1 of article 22 of this title is a frivolous submission and rejects the request pursuant to section 39-21-104.5, the taxpayer shall not be entitled to a hearing before the executive director and the provisions of section 39-21-104.5 shall apply.

Source: L. 65: p. 1133, § 2. C.R.S. 1963: § 138-9-3. L. 77: Entire section amended, pp. 742, 841, §§ 2, 4, effective July 1. L. 96: Entire section amended, p. 164, § 2, effective July 1. L. 2003: Entire section amended, p. 661, § 2, effective March 20. L. 2004: (1) amended, p. 383, § 1, effective April 8.

Editor's note: Amendments to this section by House Bill 77-1164 and Senate Bill 77-100 were harmonized.

39-21-104.5. Frivolous submissions. (1) As used in this part 1, unless the context otherwise requires, "frivolous submission" means a request for a hearing related to the tax set forth in part 1 of article 22 of this title made pursuant to section 39-21-103 or 39-21-104 that is based on a position that was previously rejected in a published opinion by a Colorado or federal court.

(2) If the executive director determines that a request for a hearing made pursuant to section 39-21-103 or 39-21-104 is a frivolous submission, the executive director may reject the request. If the executive director does not reject the request, the provisions of section 39-21-103 or 39-21-104 shall apply.

(3) If the executive director rejects a taxpayer's request for a hearing:

(a) The executive director shall notify the taxpayer in writing within a reasonable time after receiving the taxpayer's request that the taxpayer's request has been rejected; and

(b) The executive director shall make a final determination within a reasonable time after receiving the taxpayer's request for a hearing and shall send the taxpayer a notice of final determination accompanied by a notice and demand for payment by first-class mail as set forth in section 39-21-105.5.

(4) A taxpayer may appeal the final determination of the executive director in accordance with the provisions of section 39-21-105.

(5) Unless an appeal is taken as provided in section 39-21-105, the tax, together with interest thereon and penalties, if any, shall be paid within thirty days after mailing of the notice and demand for payment by the executive director.

Source: L. 2003: Entire section added, p. 662, § 3, effective March 20.

39-21-105. Appeals. (1) The taxpayer may appeal the final determination of the executive director issued pursuant to section 39-21-103, 39-21-104, or 39-21-104.5 within thirty days after the mailing of such determination.

(2) (a) Venue shall be in the district court of the county wherein the taxpayer resides or has his principal place of business. If the taxpayer has neither a residence nor a principal place of business within the state, venue shall be in the district court in and for the city and county of Denver.

(b) Jurisdiction to hear and determine appeals is conferred upon the district courts of this state. Trial may be had or any order made in term or in vacation. The district court shall try the case de novo, reviewing all questions of law and fact, such review being conducted in accordance with the Colorado rules of civil procedure. The taxpayer shall present his case in the same manner as the plaintiff in other civil actions and the normal rules of evidence shall apply. The taxpayer shall have the burden of proof with respect to the issues raised in the notice of appeal except as to the issue of whether the taxpayer has been guilty of fraud with intent to evade tax. The burden of proof shall be upon the executive director of the department of revenue or his delegate to show that a petitioner is liable as a transferee of property of a taxpayer but not to show that the taxpayer was liable for the tax. The district court may affirm, modify, or reverse the determination of the executive director and may enter judgment on its findings.

(3) Appeal to the district court shall be taken by filing, with the clerk of the district court of the proper county, a copy of the notice of final determination received by the taxpayer, together with a written notice stating that the taxpayer appeals to the district court and alleging the pertinent facts upon which such appeal is grounded.

(4) (a) Within fifteen days after filing the notice of appeal, the taxpayer shall file with the district court a surety bond in twice the amount of the taxes, interest, and other charges stated in the final determination by the executive director which are contested on appeal. The taxpayer may, at his option, satisfy the surety bond requirement by a savings account or deposit in or a certificate of deposit issued by a state or national bank or by a state or federal savings and loan association, in accordance with the provisions of section 11-35-101 (1), C.R.S., equal to twice the amount of the taxes, interest, and other charges stated in the final determination by the executive director.

(b) The taxpayer may, at his option, deposit the disputed amount with the executive director of the department of revenue in lieu of posting a surety bond. If such amount is so deposited, no further interest shall accrue on the deficiency contested during the pendency of the action. At the conclusion of the action, after appeal to the supreme court or the court of appeals or after the time for such appeal has expired, the funds deposited shall be, at the direction of the court, either retained by the executive director and applied against the deficiency or returned in whole or in part to the taxpayer with interest at the rate imposed under section 39-21-110.5. No claim for refund of amounts deposited with the executive director of the department of revenue need be made by the taxpayer in order for such amounts to be repaid in accordance with the direction of the court.

(5) Upon filing of the notice of appeal, the executive director of the department of revenue shall be deemed to be a party to such appeal; and the clerk of the district court shall docket the cause as a civil action. The appellant shall cause summons to be issued and cause the same to be served upon the executive director, in accordance with the manner provided

by law in civil cases. Notice of the date of trial shall be mailed to the taxpayer and to the executive director, at least twenty days prior thereto.

(6) The final decision made in such appeal shall be entered as a judgment, as in other civil cases, against the taxpayer or against the executive director as the case may be.

(7) The decision of the district court shall be reviewable by the supreme court or the court of appeals as is otherwise provided by law.

Source: L. 65: p. 1133, § 2. C.R.S. 1963: § 138-9-4. L. 69: p. 272, § 18. L. 81: (4) amended, p. 1863, § 1, effective June 8. L. 84: (4) amended, p. 1006, § 1, effective March 26. L. 2001: (1) amended, p. 434, § 2, effective April 20. L. 2003: (1) amended, p. 662, § 4, effective March 20. L. 2010: (1) amended, (SB 10-212), ch. 412, p. 2034, § 6, effective July 1.

Cross references: For service of summons and entry of judgment in civil cases, see C.R.C.P. 4 and 58.

ANNOTATION

Required bond constitutional. The mandatory bond requirement of subsection (4) does not violate the taxpayer's constitutional right to due process. *Callow v. Dept. of Rev.*, 197 Colo. 513, 594 P.2d 1051 (1979).

Director of revenue is vested with the full authority to determine tax liability, subject to the right of appeal to the district court, and the further right of review pursuant to the provisions of this section. *Ray v. State*, 123 Colo. 144, 226 P.2d 804 (1950).

Decision of director final against state. Since the tax provisions create the administrative machinery for determining tax liability, and since the only available remedy is that provided for the taxpayer, the decision of the director is final against the state, and the director's waiver of penalty and penalty interest is binding on the department. *Dye Constr. Co. v. Dolan*, 41 Colo. App. 293, 589 P.2d 497 (1978).

Failure to appeal within 30 days precludes judicial review. Where the taxpayer, when served with the notice of determination and assessment and demand for payment, declines to avail himself of his statutory administrative remedies, in that he fails to request a hearing before the director, offer additional evidence concerning his tax liability, post the statutory bond, or appeal to the district court from the determination of the director, the director's decision becomes final 30 days after notice thereof is mailed to the taxpayer, and it thereupon becomes no longer subject to judicial review. *Liebhart v. Dept. of Rev.*, 123 Colo. 369, 229 P.2d 655 (1951).

Mailing notice to the taxpayer's attorneys does not start the 30-day period, and an appeal is timely when commenced within 30 days of mailing notice to the taxpayer pursuant to § 39-21-104. *Adolph Coors Co. v. Charnes*, 690 P.2d 893 (Colo. App. 1984).

Subsection (2)(b) requires the trial court to try the case de novo, reviewing all questions

of law and fact, such review being conducted in accordance with the Colorado rules of civil procedure. *M & J Leasing v. Dir. of Dept. of Rev.*, 796 P.2d 28 (Colo. App. 1990).

Courts may not dispense with the bond requirement when reviewing questions of law pursuant to subsection (2)(b). For both questions of law and fact, the bond is to obtain security for the payment of taxes. *Overstreet v. Dept. of Rev.*, 178 P.3d 1259 (Colo. App. 2007).

Trial court's reliance on facts stipulated at administrative hearing was erroneous. *M & J Leasing v. Dir. of Dept. of Rev.*, 796 P.2d 28 (Colo. App. 1990).

Statutes requiring appeal bonds are ordinarily a valid exercise of legislative power, since they do not restrict or deny the "right" of appeal but merely regulate the manner of exercising it. *Reed v. Dolan*, 195 Colo. 193, 577 P.2d 284 (1978); *Callow v. Dept. of Rev.*, 197 Colo. 513, 594 P.2d 1051 (1979).

No conflict is found between this section and § 24-4-106 (5) where none plainly appears. *Dept. of Rev. v. District Court*, 193 Colo. 553, 568 P.2d 1157 (1977).

This section does not expressly prohibit the entry of a stay as authorized by § 24-4-106 (5). *Dept. of Rev. v. District Court*, 193 Colo. 553, 568 P.2d 1157 (1977).

Trial court had jurisdiction as a matter of law to waive bond requirement for indigent taxpayer and proceed to adjudicate merits of appeal concerning use tax deficiency where undisputed evidence in affidavit form was proffered to the trial court reciting tax payer's inability to post bond or make deposit required by statute. *AF Prop. v. Dept. of Rev.*, 852 P.2d 1267 (Colo. App. 1992).

Subsection (4) does not authorize a taxpayer to toll the statutory period for obtaining a surety bond by filing a motion to waive the surety bond requirement and then filing a motion to reconsider. *Overstreet v. Dept. of Rev.*, 178 P.3d 1259 (Colo. App. 2007).

Where partnership is assessed for use taxes and incurs liability owing to its failure to protest liability, taxpayer, as general partner of a limited partnership, is jointly and severally liable therefor. AF Prop. v. Dept. of Rev., 852 P.2d 1267 (Colo. App. 1992).

When issue of material fact existed as to whether general partnership had been assessed with a use tax, trial court erred in entering motion for summary judgment in favor of individual partner on grounds that part-

ner could not be held jointly and severally liable for deficiency owed by partnership. AF Prop. v. Dept. of Rev., 852 P.2d 1267 (Colo. App. 1992).

Applied in B.P.O.E. Lodge No. 804 v. Dept. of Rev., 41 Colo. App. 88, 582 P.2d 1068 (1978); Dye Constr. Co. v. Dolan, 41 Colo. App. 293, 589 P.2d 497 (1978); Kraftco Corp. v. Charnes, 636 P.2d 1300 (Colo. App. 1981); Sky Chefs v. City & County of Denver, 653 P.2d 402 (Colo. 1982); Overstreet v. Dept. of Rev., 178 P.3d 1259 (Colo. App. 2007).

39-21-105.5. Notice - first-class mail. Any notice required to be given to any taxpayer or the agent or personal representative of the estate of any taxpayer shall be sufficient if mailed, postpaid by first-class mail to the last-known address of the taxpayer or the agent or personal representative of the estate of the taxpayer. The first-class mailing of any notice under the provisions of this article and articles 22 to 29 of this title creates a presumption that such notice was received by the taxpayer or agent or personal representative of the estate of the taxpayer if the department maintains a record of the notice and maintains a certification that the notice was deposited in the United States mail by an employee of the department. Evidence of the record of the notice mailed to the last-known address of the taxpayer or agent or personal representative of the estate of the taxpayer as shown by the records of the department and a certification of mailing by first-class mail by a department employee is prima facie proof that the notice was received by the taxpayer or agent or personal representative of the estate of the taxpayer.

Source: L. 96: Entire section added, p. 164, § 3, effective July 1.

39-21-106. Compromise. (1) The executive director or his or her delegate may compromise any civil or criminal case arising under any tax or the charge on oil and gas production imposed by articles 22 to 29 of this title, article 60 of title 34, or article 3 of title 42, C.R.S., prior to reference to the department of law for prosecution or defense; and the attorney general or his or her delegate shall, upon the written direction of the executive director, compromise any such case after reference to the department of law for prosecution or defense.

(2) Whenever a compromise of two thousand five hundred dollars or more is made by the executive director or his delegate in any case, there shall be placed on file in the office of the executive director or his delegate the opinion of the director with his reasons therefor, which may include financial inability of the taxpayer to pay a greater amount, with a statement of:

- (a) The amount of tax assessed;
 - (b) The amount of interest, additional amount, addition to the tax, or assessable penalty imposed by law on the person against whom the tax is assessed; and
 - (c) The amount paid in accordance with the terms of the compromise.
- (3) Notwithstanding the provisions of subsection (2) of this section, no such opinion shall be required with respect to the compromise of any civil case in which the unpaid amount of tax assessed, including any interest, additional amount, addition to the tax, or assessable penalty, is less than two thousand five hundred dollars.

Source: L. 65: p. 1135, § 2. C.R.S. 1963: § 138-9-5. L. 72: p. 621, § 165. L. 77: (1) amended, p. 842, § 5, effective July 1; (1) amended, pp. 1766, 1852, §§ 3, 5, effective January 1, 1978. L. 79: (1) amended, p. 1499, § 22, effective January 1, 1980. L. 86: (1) amended, p. 1110, § 5, effective July 1. L. 89: (1) amended, p. 1594, § 6, effective July 1, 1993. L. 90: (1) amended, p. 1722, § 5, effective May 1; (1) amended, p. 1722, § 6, effective July 1, 1993. L. 2001: (1) amended, p. 778, § 9, effective June 1. L. 2009: (1) amended, (HB 09-1053), ch. 159, p. 689, § 12, effective August 5.

Editor's note: Amendments to subsection (1) by House Bill 77-1076, Senate Bill 77-100, and Senate Bill 77-144 were harmonized.

39-21-107. Limitations. (1) Except as provided in this section and unless such time is extended by waiver, the amount of any tax or of any charge on oil and gas production imposed pursuant to articles 24 to 29 of this title or article 3 of title 42, C.R.S., and the penalty and interest applicable thereto, shall be assessed within three years after the return was filed, whether or not such return was filed on or after the date prescribed, and no assessment shall be made or credit taken and no notice of lien shall be filed, nor distraint warrant issued, nor suit for collection instituted, nor any other action to collect the same commenced after the expiration of such period; except that a written proposed adjustment of the tax liability by the department issued prior to the expiration of such period shall extend the limitation of this subsection (1) for one year after a final determination or assessment is made. No lien shall continue after the three-year period provided for in this subsection (1), except for taxes assessed before the expiration of such period, notice of lien with respect to which has been filed prior to the expiration of such period, and except for taxes on which written notice of any proposed adjustment of the tax liability has been sent to the taxpayer during such three-year period, in which case the lien shall continue for one year only after the expiration of such period or after the issuance of a final determination or assessment based on the proposed adjustment issued prior to the expiration of the three-year period. This subsection (1) shall not apply to income tax or to any tax imposed under article 23.5 of this title.

(2) In the case of an income tax imposed by article 22 of this title, unless such time is extended by waiver and except as provided in section 39-22-601 (6) (e), the assessment of any tax, penalties, and interest shall be made within one year after the expiration of the time provided for assessing a deficiency in federal income tax or changing the reported federal taxable income of a partnership, limited liability company, or fiduciary, including any extensions of such period by agreement between the taxpayer and the federal taxing authorities; except that a written proposed adjustment of the tax liability by the department shall extend the limitation of this subsection (2) for one year after a final determination or assessment is made and except that, if the taxpayer has been audited by the department for the year in question and the issues raised in the audit have been settled by agreement for payment or payment of deficiencies arising therefrom, then any additional assessment shall be limited to deficiencies arising as a result of adjustments made by the commissioner of internal revenue in the final determination of federal taxable income. An assessment of income taxes having been made according to law shall be good and valid and collection thereof may be enforced at any time within six years from the date of said assessment.

(3) For purposes of this section, a tax return filed before the last day prescribed by law or by regulation promulgated pursuant to law for the filing thereof shall be considered as filed on such last day.

(4) In the case of failure to file a return or the filing of a false or fraudulent return with intent to evade tax, the tax may be assessed and collected at any time.

(5) Where, before the expiration of the time prescribed in this section for the assessment of tax, both the executive director of the department of revenue or his delegate and the taxpayer have consented in writing to an assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(6) Nothing in this section shall be construed to limit any right accrued or revive any liability barred by any statute enacted on or before July 1, 1965.

Source: L. 65: p. 1136, § 2. C.R.S. 1963: § 138-9-6. L. 73: p. 1417, § 102. L. 77: (2) amended, p. 1770, § 1, effective May 18; (1) amended, pp. 1767, 1853, §§ 4, 6, effective January 1, 1978. L. 79: (1) amended, p. 1500, § 23, effective January 1, 1980. L. 83: (1) and (2) amended, p. 1510, § 1, effective May 26. L. 86: (1) amended, p. 1110, § 6, effective July 1. L. 89: (1) amended, p. 1594, § 7, effective July 1, 1993. L. 90: (2) amended, p. 450, § 29, effective April 18; (1) amended, p. 1722, § 7, effective May 1; (1) amended, p. 1723, § 8, effective July 1, 1993. L. 92: (1) amended, p. 2247, § 1, effective July 1. L. 2001: (1) amended, p. 778, § 10, effective June 1. L. 2002: (1) amended, p. 1361, § 16, effective July 1. L. 2009: (1) amended, (HB 09-1053), ch. 159, p. 690, § 13, effective August 5.

Editor's note: Amendments to subsection (1) by Senate Bill 77-144 and House Bill 77-1076 were harmonized.

ANNOTATION

Law reviews. For article, "Taxation", see 32 Dicta 418 (1955).

Section applicable where use taxes assessed, no return filed. It is the intent of the general assembly that this section, rather than § 39-26-210, should be the controlling statute of limitations where use taxes are assessed but no return is filed. *Dye Constr. Co. v. Dolan*, 41 Colo. App. 293, 589 P.2d 497 (1978).

Previously barred liabilities not revived. The general assembly intended to provide that

liabilities which had already been barred by other statutory provisions on the date when this section became effective were not revived by subsection (6). *Dye Constr. Co. v. Dolan*, 41 Colo. App. 293, 589 P.2d 497 (1978).

Applied in *CF&I Steel Corp. v. Charnes*, 637 P.2d 324 (Colo. 1981); *Kraftco Corp. v. Charnes*, 636 P.2d 1300 (Colo. App. 1981).

39-21-108. Refunds. (1) (a) In the case of income tax imposed by article 22 of this title, the taxpayer must file any claim for refund or credit for any year not later than the period provided for filing a claim for refund of federal income tax plus one year. However, any extensions of the period by agreement between the taxpayer and the federal taxing authorities shall extend the period established in this section by the same amount of time. The department shall not pay any refund for which the claim is filed later than the period provided for the payment of a refund of federal income tax plus one year. However, no refund or credit of income tax shall be made to any taxpayer who fails to file a return pursuant to section 39-22-601 within four years from the date the return was required to be filed. Except in the case of failure to file a return or the filing of a false or fraudulent return with intent to evade tax and otherwise notwithstanding any provision of law, the statute of limitations relating to claims for refund or credit for any year shall not expire prior to the expiration of the time within which a deficiency for such year could be assessed. In the case of the charge on oil and gas production imposed by article 60 of title 34, C.R.S., and the passenger-mile tax imposed by article 3 of title 42, C.R.S., or the severance tax imposed by article 29 of this title, the taxpayer shall file any claim for refund or credit for any period not later than three years after the date of payment. Claims for refund of other taxes covered by this article shall be made within the time limits expressly provided for the specific taxes involved. Except as provided in section 39-21-105, no suit for refund may be commenced. This subsection (1) shall not apply to sales and use taxes.

(b) Repealed.

(2) If the executive director discovers from the examination of a return within the time periods provided for the filing of refunds, or upon claim duly filed by the taxpayer, or upon final judgment of a court that the tax, penalty, or interest paid by any taxpayer is in excess of the amount due or has been illegally or erroneously collected, then the executive director shall issue in favor of the taxpayer his voucher to the controller for the refund of such illegally collected tax, penalty, or interest, regardless of whether or not such sum was paid under protest, together with interest provided in section 39-21-110. Upon receipt of such voucher properly executed and endorsed, the controller shall issue his warrant for the payment to the taxpayer out of the reserve provided therefor; but the controller shall keep in his files a duplicate of said voucher and also a statement which shall set forth the reason why such refund has been ordered.

(3) (a) (I) (A) Whenever it is established that any taxpayer has, for any period open under the statutes, overpaid a tax covered by articles 22 and 26 to 29 of this title, article 60 of title 34, C.R.S., and article 3 of title 42, C.R.S., and that: There is an unpaid balance of tax and interest accrued, according to the records of the executive director, owing by such taxpayer for any other period; there is an amount required to be repaid to the unemployment compensation fund pursuant to section 8-81-101 (4), C.R.S., the amount of which has been determined to be owing as a result of a final agency determination or judicial decision or that has been reduced to judgment by the division of unemployment insurance in the department of labor and employment; there is any unpaid child support debt as set forth in

section 14-14-104, C.R.S., or child support arrearages that are the subject of enforcement services provided pursuant to section 26-13-106, C.R.S., as certified by the department of human services; there are any unpaid obligations owing to the state as set forth in section 26-2-133, C.R.S., for overpayment of public assistance or medical assistance benefits, the amount of which has been determined to be owing as a result of final agency determination or judicial decision or that has been reduced to judgment, as certified by the department of human services; there is any unpaid loan or other obligation due to a state-supported institution of higher education as set forth in section 23-5-115, C.R.S., the amount of which has been determined to be owing as a result of a final agency determination or judicial decision or that has been reduced to judgment, as certified by the appropriate institution; there is any unpaid loan due to the student loan division of the department of higher education as set forth in section 23-3.1-104 (1) (p), C.R.S., the amount of which has been determined to be owing as a result of a final agency determination or judicial decision or that has been reduced to judgment, as certified by the division; there is any unpaid loan due to the collegeinvest division of the department of higher education as set forth in section 23-3.1-206, C.R.S., the amount of which has been determined to be owing as a result of a final agency determination or judicial decision or that has been reduced to judgment; there is any outstanding judicial fine, fee, cost, or surcharge as set forth in section 16-11-101.8, C.R.S., or judicial restitution as set forth in section 16-18.5-106.8, C.R.S., the amount of which has been determined to be owing as a result of a final judicial department determination or certified by the judicial department as a judgment owed the state or a victim; there is any unpaid debt owing to the state or any agency thereof by such taxpayer, and that is found to be owing as a result of a final agency determination or the amount of which has been reduced to judgment and as certified by the controller; or the taxpayer is a qualified individual identified pursuant to section 39-22-120 (10) or 39-22-2003 (9), so much of the overpayment of tax plus interest allowable thereon as does not exceed the amount of such unpaid balance or unpaid debt must be credited first to the unpaid balance of tax and interest accrued and then to the unpaid debt, and any excess of the overpayment must be refunded. If the taxpayer elects to designate his or her refund as a credit against a subsequent year's tax liability, the amount allowed to be so credited must be reduced first by the unpaid balance of tax and interest accrued and then by the unpaid debt. If the taxpayer filed a joint return, the executive director shall notify the taxpayer's spouse that the portion of the overpayment that is generated by the spouse's income will be refunded upon receipt of a request detailing said amount. As used in this section, unless the context otherwise requires, "agency" includes state-supported institutions of higher education.

(B) With respect to debts for any unpaid loan or other obligation due to a state-supported institution of higher education as set forth in section 23-5-115, C.R.S., or any unpaid loan due to the student loan division of the department of higher education as set forth in section 23-3.1-104 (1) (p), C.R.S., or any unpaid loan due to the collegeinvest division of the department of higher education as set forth in section 23-3.1-206, C.R.S., a debtor must be afforded his or her due process rights prior to a final agency determination.

(II) Any moneys withheld for payment of an unemployment compensation benefit debt pursuant to this subsection (3) shall be deposited with the state treasurer and credited to the unemployment compensation fund. For persons required to repay benefit overpayments in accordance with section 8-81-101 (4) (a), C.R.S., the executive director of the department of revenue shall provide to said division the taxpayers' names and associated amounts deposited with the state treasurer.

(III) Any moneys withheld for payment of a child support debt or child support arrearages pursuant to this subsection (3) shall be deposited in the family support registry created pursuant to section 26-13-114, C.R.S., for disbursement by the department of human services. For all names and amounts certified by the department of human services pursuant to section 26-13-111, C.R.S., the executive director of the department of revenue shall provide to the department of human services the taxpayers' names and associated amounts deposited with the state treasurer and any other identifying information as required by the department of human services.

(IV) Any moneys withheld for payment of an institution of higher education debt pursuant to this subsection (3) shall be deposited with the state treasurer for disbursement

by the state treasurer to the appropriate institution. For each person whose name and amount is certified by the appropriate institution pursuant to section 23-5-115, C.R.S., the executive director of the department of revenue shall provide to the appropriate institution the name, address, and social security number or federal employer identification number, whichever is applicable, of the taxpayer whose refund is being offset, the amount of the offset, and any other identifying information as required by the institution.

(V) Any moneys withheld for payment of an unpaid debt owing to the state pursuant to this subsection (3) shall be deposited with the state treasurer for disbursement by the controller. For each person whose name and amount is certified by the controller pursuant to section 24-30-202.4, C.R.S., the executive director of the department of revenue shall provide to the controller the name, address, and social security number or federal employer identification number, whichever is applicable, of the taxpayer whose refund is being offset, the amount of the offset, and any other identifying information as required by the controller.

(VI) Any moneys withheld for payment of a student loan division debt pursuant to this subsection (3) shall be deposited with the state treasurer for disbursement by the state treasurer to the division. For each person whose name and amount is certified by the division pursuant to section 23-3.1-104 (1) (p), C.R.S., the executive director of the department of revenue shall provide to the division the name, address, and social security number or federal employer identification number, whichever is applicable, of the taxpayer whose refund is being offset, the amount of the offset, and any other identifying information as required by the division.

(VII) Any moneys withheld for payment of obligations owed the department of human services for overpayment of public assistance benefits pursuant to this subsection (3) shall be deposited with the state treasurer for disbursement by the department of human services. For all names and associated amounts certified by the department of human services pursuant to section 26-2-133, C.R.S., the executive director of the department of revenue shall provide to the department of human services the names of taxpayers and the associated amounts deposited with the state treasurer and any other identifying information as required by the department of human services.

(VIII) Any moneys withheld for payment of an obligation certified by the judicial department pursuant to section 16-11-101.8 or 16-18.5-106.8, C.R.S., shall be transferred to the judicial department. At the time of the offset, the executive director shall notify the taxpayer of the offset and shall provide to the judicial department the name, address, and social security number or federal employer identification number, whichever is applicable, of the taxpayer whose refund is being offset, the amount of the offset, and any other identifying information as required by the judicial department.

(b) In the event there are debts for overpayments of unemployment insurance pursuant to section 8-81-101 (4), C.R.S., debts for unpaid child support, as set forth in section 26-13-111, C.R.S., debts for overpayment of public assistance or medical assistance benefits, as set forth in section 26-2-133, C.R.S., debts for any unpaid loan or other obligation due to a state-supported institution of higher education, as set forth in section 23-5-115, C.R.S., debts for any unpaid loan due to the student loan division of the department of higher education, as set forth in section 23-3.1-104 (1) (p), C.R.S., any amounts owed for judicial fines, fees, costs, or surcharges, as set forth in section 16-11-101.8, C.R.S., any amounts owed for judicial restitution, as set forth in section 16-18.5-106.8, C.R.S., and other unpaid debts owing to the state or any agency thereof, as set forth in this subsection (3), then credit to the unpaid debts shall be prorated on the basis of the ratio of the amount of each such unpaid debt as compared to the total amount of unpaid debts.

(4) Notwithstanding the provisions of subsection (1) of this section, in the case of the severance tax imposed by article 29 of this title, when an increase in the value of any product is subject to the approval or affected by the actions of any agency of the United States, or the state of Colorado, or any court, the increased value shall be subject to this tax. In the event that the increase in value is disapproved or reduced as the direct or indirect result of the actions of any agency of the United States, the state of Colorado, or any court, either in whole or in part, then the amount of tax which has been paid on the disapproved or reduced part of the value shall be considered excess tax. Within one year following the

final determination of value, any person who has paid any such excess tax may apply for a refund, and the executive director, upon proper finding, shall have the authority and duty to refund the amount of excess tax paid. Any refund may, at the discretion of the executive director, be made in the form of a credit against future tax payments.

(5) (a) On and after October 1, 2002, any warrant representing a refund of income tax imposed by article 22 of this title or a grant for property taxes, rent, or heat or fuel expenses assistance allowed by article 31 of this title that is not presented for payment within six months from its date of issuance shall be void. On and after October 1, 2002, upon the cancellation of a warrant in accordance with the standard operating procedures of the department or the state controller, the department shall forward to the state treasurer the name of the taxpayer as it appears on the warrant, the taxpayer identification number, the taxpayer's last known address, the amount of the cancelled warrant, and an amount of money equal to the amount specified in the warrant so that the state treasurer may make the refund pursuant to the provisions of the "Unclaimed Property Act", article 13 of title 38, C.R.S.

(b) The department may reclaim from the unclaimed property fund and credit to the appropriate state revenue fund any amount forwarded by the department to the state treasurer pursuant to paragraph (a) of this subsection (5) that was based on a warrant representing an erroneous refund or grant. If the state treasurer issued an erroneous refund or grant to the person named on the warrant, the treasurer shall provide proof of that payment to the department and the department may assess that amount pursuant to section 39-21-103 (1).

(6) Repealed.

(7) (a) On and after October 1, 2010, any warrant representing a refund issued by the department, excluding refunds addressed by subsection (5) of this section, that is not presented for payment within six months from its date of issuance shall be void. On and after October 1, 2010, upon the cancellation of a warrant in accordance with the standard operating procedures of the department or the state controller, the department shall forward to the state treasurer the name of the taxpayer as it appears on the warrant, the taxpayer identification number, the taxpayer's last-known address, the amount of the canceled warrant, and an amount of money equal to the amount specified in the warrant so that the state treasurer may make the refund pursuant to the provisions of the "Unclaimed Property Act", article 13 of title 38, C.R.S.

(b) The department may reclaim from the unclaimed property fund and credit to the appropriate state revenue fund any amount forwarded by the department to the state treasurer pursuant to paragraph (a) of this subsection (7) that was based on a warrant representing an erroneous refund or grant. If the state treasurer issued an erroneous refund or grant to the person named on the warrant, the treasurer shall provide proof of that payment to the department, and the department may assess that amount pursuant to section 39-21-103 (1).

Source: L. 65: p. 1137, § 2. C.R.S. 1963: § 138-9-7. L. 67: pp. 847, 848, §§ 1, 2. L. 71: p. 1265, § 1. L. 77: (1)(a) amended and (4) added, pp. 1767, 1853, §§ 5, 7, effective January 1, 1978. L. 82: (3) amended, p. 558, § 1, effective April 6. L. 83: (3) amended, p. 794, § 5, effective June 3; (3) amended, p. 654, § 2, effective June 10; (3) amended, p. 438, § 2, effective June 15. L. 84: (3)(a) amended and (3)(b)(IV) added, pp. 1008, 1010, §§ 3, 4, effective March 29; (3) amended, p. 1011, § 1, effective April 27; (3)(b)(IV) repealed and (3)(b) amended, pp. 1125, 1126, §§ 47, 48, effective June 7. L. 85: (3)(a)(I), (3)(a)(VI), and (3)(b) amended, p. 1366, § 39, effective June 28; (3)(a)(I), (3)(a)(III), and (3)(b) amended, p. 602, § 22, effective July 1. L. 88: (3)(a)(I) amended, p. 637, § 19, effective July 1. L. 89: (3)(a)(I) and (3)(b) amended and (3)(a)(VII) added, p. 1195, § 4, effective June 7; (3)(a)(I) amended, p. 799, § 34, effective July 1; (1)(a) amended, p. 1595, § 8, effective July 1, 1993. L. 94: (3)(a)(I), (3)(a)(III), and (3)(a)(VII) amended, p. 3135, § 299, effective July 1. L. 96: (1)(a) amended, p. 164, § 4, effective July 1. L. 98: (3)(a)(II) amended, p. 91, § 5, effective March 23. L. 98, 2nd Ex. Sess.: (3)(a)(I) amended, p. 7, § 4, effective September 16. L. 99: (3)(a)(I) amended, p. 1317, § 5, effective August 4. L. 2001: (1)(a) and (3)(a)(I) amended, p. 778, § 11, effective June

1; (1)(a) amended, p. 233, § 2, effective August 8; (5) added, p. 619, § 4, effective August 8. **L. 2002:** (3)(a)(I) amended, p. 99, § 1, effective August 7. **L. 2004:** (1)(a) amended, p. 383, § 2, effective April 8; (3)(a)(I) amended, p. 576, § 35, effective July 1; (1)(b) repealed, p. 207, § 31, effective August 4; (3)(a)(I)(A) and (3)(b) amended and (3)(a)(VIII) added, p. 1259, § 4, effective August 4; (6) added, p. 315, § 3, effective August 4. **L. 2009:** (1)(a) and (3)(a)(I)(A) amended, (HB 09-1053), ch. 159, p. 690, § 14, effective August 5; (3)(a)(III), (3)(a)(IV), (3)(a)(V), and (3)(a)(VI) amended, (HB 09-1137), ch. 308, p. 1662, § 14, effective September 1. **L. 2010:** (6) repealed, (SB 10-212), ch. 412, p. 2032, § 1, effective July 1; (7) added, (SB 10-186), ch. 309, p. 1454, § 1, effective August 11. **L. 2011:** (1)(a) amended, (HB 11-1303), ch. 264, p. 1175, § 91, effective August 10. **L. 2012:** (3)(a)(I)(A) amended, (HB 12-1120), ch. 27, p. 112, § 31, effective June 1.

Editor's note: (1) Amendments to subsection (1)(a) by House Bill 77-1076 and Senate Bill 77-144 were harmonized.

(2) Amendments to subsection (3) by Senate Bill 83-107 and Senate Bill 83-296 harmonized with House Bill 83-1445.

(3) Amendments to subsection (3) by Senate Bill 84-171 and Senate Bill 84-32 were harmonized.

(4) Amendments to subsection (3)(a)(I) and (3)(b) by Senate Bill 85-170 and House Bill 85-1380 were harmonized.

(5) Amendments to subsection (3)(a)(I) by House Bill 89-1180 and Senate Bill 89-153 were harmonized.

(6) Amendments to subsection (1)(a) by Senate Bill 01-125 and House Bill 01-1304 were harmonized.

(7) Amendments to subsection (3)(a)(I)(A) by House Bill 04-1350 and Senate Bill 04-253 were harmonized.

(8) The effective date for amendments to subsection (3)(a)(I)(A) by House Bill 12-1120 (chapter 27, Session Laws of Colorado 2012) was changed from August 8, 2012, to June 1, 2012, by House Bill 12S-1002 (First Extraordinary Session, chapter 2, p. 2432, Session Laws of Colorado 2012.)

Cross references: For the legislative declaration contained in the 2001 act amending subsection (1)(a), see section 1 of chapter 95, Session Laws of Colorado 2001.

ANNOTATION

Law reviews. For article, "Taxation", which discusses Tenth Circuit decisions dealing with interception of tax refunds for reimbursement of state child support, see 63 Den. U. L. Rev. 455 (1986).

Trial court erred in allowing state department of revenue to determine the form of the remedy for collecting an unconstitutional tax. It is the obligation of the trial court, after declaring the collected tax unconstitutional, to provide it with a remedy. *Buckley Powder Co. v. State*, 924 P.2d 1133 (Colo. App. 1996), *aff'd* in part and *rev'd* in part on other grounds, 945 P.2d 841 (Colo. 1997).

Issue of whether the state's offset of tax refunds against debts to the state was illegal did not involve statutory interpretation. Initially, it would have required resolution of the factual issue of whether the debts had been reduced to judgment pursuant to subsection (3)(a)(I). This factual determination is within the ambit of the administrator in the hearing. *Kendal v. Cason*, 791 P.2d 1227 (Colo. App. 1990).

Subsection (2) provides for a refund of all taxes overpaid by military retirees as a result of § 39-22-104 (4)(g) (now repealed) which was found to be unconstitutional. *Kuhn v. State Dept. of Rev.*, 817 P.2d 101 (Colo. 1991).

Subsection (1)(a) effectively creates a four-year statute of repose. When read in combination with the applicable federal statute, the result is that no taxpayer may seek a refund of taxes in Colorado that were paid more than four years prior to the filing of a claim for a refund. *Kuhn v. State Dept. of Rev.*, 897 P.2d 792 (Colo. 1995).

"Discovery rule" inapplicable. Unlike the usual type of statutory limitation period, which begins to run when the plaintiff knows or should have known of both the injury and its cause, subsection (1)(a) bars a claim after the specified period regardless of the date on which the claimant discovers the error or omission that gave rise to the claim. *Kuhn v. State Dept. of Rev.*, 897 P.2d 792 (Colo. 1995).

39-21-109. Interest on underpayment, nonpayment, or extensions of time for payment of tax. (1) If any amount of tax or any charge on oil and gas production imposed pursuant to articles 22 to 29 of this title, article 60 of title 34, or article 3 of title 42, C.R.S.,

is not paid on or before the last date prescribed for payment, interest on such amount at the rate imposed under section 39-21-110.5, except as provided in subsection (1.5) of this section, shall be paid for the period from such last date to the date paid. The last date prescribed for payment shall be determined without regard to any extension of time for payment and shall be determined without regard to any notice and demand for payment issued, by reason of jeopardy, prior to the last date otherwise prescribed for such payment. In the case of a tax in which the last date for payment is not otherwise prescribed, the last date for payment shall be deemed to be the date the liability for the tax arises, and in no event shall it be later than the date notice and demand for the tax is made by the executive director of the department of revenue or his delegate.

(1.5) If payment of or an agreement to pay the amount of any tax described in subsection (1) of this section is made within thirty days of notice of underpayment, nonpayment, or extension of time, the executive director shall waive the imposition of the three points in excess of the prime rate described in section 39-21-110.5 (2) on such amount unless the executive director determines that there has been a willful neglect or failure to pay such tax.

(2) Interest prescribed under this section shall be paid upon notice and demand and shall be assessed, collected, and paid in the same manner as the tax to which it is applicable.

(3) If any portion of a tax is satisfied by credit of an overpayment, then no interest shall be imposed under this section on the portion of the tax so satisfied for any period during which, if the credit had not been made, interest would have been allowed with respect to such overpayment.

(4) Interest prescribed under this section on any tax may be assessed and collected at any time during the period within which the tax to which such interest relates may be assessed and collected.

(5) This section shall not apply to any failure to pay estimated Colorado income tax.

Source: L. 65: p. 1138, § 2. C.R.S. 1963: § 138-9-8. L. 73: p. 1418, § 103. L. 77: (1) amended, pp. 1768, 1854, §§ 6, 8, effective January 1, 1978. L. 79: (1) amended, p. 1500, § 24, effective January 1, 1980. L. 81: (1) amended, p. 1863, § 2, effective June 8. L. 86: (1) amended, p. 1111, § 7, effective July 1. L. 89: (1) amended, p. 1595, § 9, effective July 1, 1993. L. 90: (1) amended and (1.5) added, p. 1728, § 2, effective April 5; (1) amended, p. 1723, § 9, effective May 1; (1) amended, pp. 1729, 1724, §§ 3, 10, effective July 1, 1993.

Editor's note: Amendments to subsection (1) by Senate Bill 77-144 and House Bill 77-1076 were harmonized. Amendments to subsection (1) by House Bill 90-1176 and House Bill 90-1258 were harmonized.

ANNOTATION

Law reviews. For article, "Collecting Pre- and Post-Judgment Interest in Colorado: A Primer", see 15 Colo. Law. 753 (1986). For article, "An Update of Appendices from Collecting Pre- and Post-Judgment Interest in Colorado", see 15 Colo. Law. 990 (1986).

Revocation of permission to remit sales tax on a cash receipt basis is not a notice of deficiency, and assessment of tax does not on its own create a tax liability. *Montgomery Ward & Co. v. Dept. of Rev.*, 675 P.2d 318 (Colo. App. 1983).

A determination that sales tax on credit sales should be remitted on a "sales" or accrual basis, rather than on a cash receipt basis, is not a notice of deficiency creating liability under this section. *Montgomery Ward & Co. v. Dept. of Rev.*, 675 P.2d 318 (Colo. App. 1983).

Applied in *Western Elec. Co. v. Weed Jr.*, 185 Colo. 340, 524 P.2d 1369 (1974); *Dye Constr. Co. v. Dolan*, 41 Colo. App. 293, 589 P.2d 497 (1978).

39-21-110. Interest on overpayments. (1) Interest shall be allowed and paid upon any overpayment in respect to any tax or any charge on oil and gas production imposed pursuant to articles 22 to 29 of this title, article 60 of title 34, or article 3 of title 42, C.R.S., at the rate imposed under section 39-21-110.5. Such interest shall be allowed and paid as

follows:

(a) In the case of a credit, from the date of the overpayment to the due date of the amount against which the credit is taken;

(b) In the case of a refund, from the date of the overpayment to a date, to be determined by the executive director of the department of revenue or his delegate, preceding the date of the refund by not more than thirty days, whether or not such refund is accepted by the taxpayer after tender of such refund to the taxpayer. The acceptance of such refund shall be without prejudice to any right of the taxpayer to claim any additional overpayment and interest thereon.

(1.5) Notwithstanding any other provision of this section to the contrary, a payment not made incident to a bona fide and orderly discharge of an actual liability or a liability reasonably assumed to be imposed by law is not an overpayment for the purposes of this section only, and interest is not payable on the payment. For purposes of this subsection (1.5), the following burdens of proof shall apply:

(a) If a taxpayer's total payments are less than or equal to twice the amount of the actual tax liability, then the department shall bear the burden of proving, by a preponderance of the evidence, that such payments were not made incident to a bona fide and orderly discharge of an actual liability or a liability reasonably assumed to be imposed by law; and

(b) If a taxpayer's total payments are more than twice the amount of the actual tax liability, then the taxpayer shall bear the burden of proving, by a preponderance of the evidence, that such payments were made incident to a bona fide and orderly discharge of an actual liability or a liability reasonably assumed to be imposed by law.

(2) Any portion of any tax or of a charge on oil and gas production imposed pursuant to articles 22 to 29 of this title, article 60 of title 34, or article 3 of title 42, C.R.S., or any interest, assessable penalty, additional amount, or addition to a tax or charge which has been erroneously refunded shall bear interest at the rate imposed under section 39-21-110.5 from the date of the payment of the refund.

(3) If any overpayment of any tax or of a charge on oil and gas production imposed pursuant to articles 22 to 29 of this title, article 60 of title 34, or article 3 of title 42, C.R.S., is refunded within ninety days after the last date prescribed for filing the return of such tax or charge, determined without regard to any extension of time for filing the return, no interest shall be allowed under subsection (1) of this section on such overpayment.

(4) If the amount of any income tax is reduced by reason of a carry-back of a net operating loss, such reduction in tax shall not affect the computation of interest under this section for the period ending with the last day of the taxable year in which the net operating loss arises. If any overpayment of income tax results from a carry-back of a net operating loss, such overpayment shall be deemed not to have been made prior to the close of the taxable year in which such net operating loss arises.

Source: **L. 65:** p. 1139, § 2. **C.R.S. 1963:** § 138-9-9. **L. 73:** p. 1418, § 104. **L. 77:** IP(1), (2), and (3) amended, pp. 1768, 1854, §§ 7, 9, effective January 1, 1978. **L. 79:** IP(1), (2), and (3) amended, p. 1500, § 25, effective January 1, 1980. **L. 81:** IP(1) and (2) amended, p. 1864, § 3, effective June 8. **L. 86:** (2) amended, p. 1111, § 8, effective July 1. **L. 89:** (2) and (3) amended, p. 1596, § 10, effective July 1, 1993. **L. 90:** IP(1), (2), and (3) amended, p. 1724, § 11, effective May 1; IP(1), (2), and (3) amended, p. 1725, § 12, effective July 1, 1993. **L. 2009:** (1.5) added, (HB 09-1219), ch. 71, p. 241, § 1, effective March 25.

Editor's note: Amendments to the introductory portion to subsection (1) and subsections (2) and (3) by Senate Bill 77-144 and House Bill 77-1076 were harmonized.

ANNOTATION

Law reviews. For article, "Collecting Pre- and Post-Judgment Interest in Colorado: A Primer", see 15 Colo. Law. 753 (1986). For article, "An Update of Appendices from Col-

lecting Pre- and Post-Judgment Interest in Colorado", see 15 Colo. Law. 990 (1986).

Trial court erred in allowing state department of revenue to determine the form of the

remedy for collecting an unconstitutional tax.

It is the obligation of the trial court, after declaring the collected tax unconstitutional, to provide it with a remedy. *Buckley Powder Co. v.*

State, 924 P.2d 1133 (Colo. App. 1996), *aff'd* in part and *rev'd* in part on other grounds, 945 P.2d 841 (Colo. 1997).

39-21-110.5. Rate of interest to be fixed. (1) When interest is required or permitted to be charged under any provision of articles 20 to 29 of this title in connection with interest on underpayment, nonpayment, extension of time for payment, or overpayment, or when interest is required to be paid pursuant to section 8-20.5-104, C.R.S., in connection with an application for reimbursement from the petroleum storage tank fund, such interest shall be computed at the annual rate which has been established pursuant to this section.

(2) Except as otherwise provided in subsection (4) of this section, the annual rate of interest shall be the prime rate, as reported by the "Wall Street Journal", plus three points, rounded to the nearest full percent. In the event that more than one rate is so reported, the highest rate shall be utilized.

(3) The commissioner of banking shall establish an adjusted annual rate of interest based upon the computation specified in subsections (2) and (4) of this section and rounded to the nearest full percent. The adjusted annual rate of interest shall be so established by the commissioner of banking as of July 2, 1990, to become effective January 1, 1991. Thereafter, on July 1, or the next succeeding business day, of each year, the adjusted annual rate of interest shall be established in the same manner, to become effective on January 1 of the next succeeding year.

(4) For refunds issued on or after January 1, 2004, the annual rate of interest applicable to sections 39-21-110 and 39-22-622 shall be as follows:

(a) If the amount of the refund is less than five thousand dollars or if the amount of the refund is equal to or greater than five thousand dollars but less than ten percent of the taxpayer's net tax liability for the period for which the tax is paid, the annual rate of interest shall be the prime rate, as reported by the "Wall Street Journal", plus three points, rounded to the nearest full percent. In the event that more than one rate is so reported, the highest rate shall be utilized.

(b) (I) If the amount of the refund is equal to or greater than five thousand dollars and the amount of the refund is equal to or greater than ten percent of the taxpayer's net tax liability for the period for which the tax is paid, the annual rate of interest shall be the prime rate, as reported by the "Wall Street Journal", rounded to the nearest full percent, except as provided in subparagraph (II) of this paragraph (b). In the event that more than one rate is reported, the highest rate shall be utilized.

(II) For any refund subject to the provisions of subparagraph (I) of this paragraph (b), if the taxpayer demonstrates that the overpayment of tax necessitating such refund was due to good cause as determined by the executive director, the annual rate of interest shall be the prime rate, as reported by the "Wall Street Journal", plus three points, rounded to the nearest full percent. In the event that more than one rate is so reported, the highest rate shall be utilized.

Source: **L. 81:** Entire section added, p. 1864, § 4, effective June 8. **L. 90:** (2) and (3) amended, p. 1728, § 1, effective April 5. **L. 95:** (1) amended, p. 420, § 11, effective July 1. **L. 2003:** (2) and (3) amended and (4) added, p. 2360, § 1, effective August 6.

39-21-111. Jeopardy assessment and demands. (1) If the executive director of the department of revenue finds that collection of the tax will be jeopardized by delay, in his discretion, he may declare the taxable period immediately terminated, determine the tax, and issue notice and demand for payment thereof; and, having done so, the tax shall be due and payable forthwith, and the executive director may proceed immediately to collect such tax as provided in section 39-21-114.

(2) In any other case wherein it appears that the revenue is in jeopardy, the executive director of the department of revenue may immediately issue demand for payment; and, regardless of the provisions of sections 39-21-103 and 39-21-105, the tax shall be due and

payable forthwith and, in his discretion, the executive director may proceed immediately to collect said tax as provided in section 39-21-114.

(3) Collection under either subsection (1) or (2) of this section may be stayed if the taxpayer gives such security for payment as shall be satisfactory to the executive director.

Source: L. 65: p. 1140, § 2. C.R.S. 1963: § 138-9-10.

ANNOTATION

Section not unconstitutionally vague. The words "jeopardized" and "jeopardy", in subsections (1) and (2), respectively, are not unconstitutionally vague. *Kraftco Corp. v. Charnes*, 636 P.2d 1300 (Colo. App. 1981).

Subsection (2) can reasonably be interpreted to apply in those situations in which a notice of deficiency has been issued. *Flores v. Dept. of Rev.*, 802 P.2d 1175 (Colo. App. 1990).

Where a jeopardy assessment has been made without a notice of deficiency and a

distrainment warrant and seizure have been pursued under § 39-21-114, the taxpayer has no right to an administrative hearing under § 39-21-103, but the taxpayer may sue the executive director of the department in district court under § 39-21-114 (6) or proceed under § 24-4-106. *Flores v. Dept. of Rev.*, 802 P.2d 1175 (Colo. App. 1990).

39-21-112. Duties and powers of executive director. (1) It is the duty of the executive director to administer the provisions of this article, and he or she has the power to adopt, amend, or rescind such rules not inconsistent with the provisions of this article, articles 22 to 29 of this title, and article 3 of title 42, C.R.S., and, subject to other provisions of law relating to the promulgation of rules, to appoint, pursuant to section 13 of article XII of the state constitution, such persons, to make such expenditures, to require such reports, to make such investigations, and to take such other action as he or she deems necessary or suitable to that end. The executive director shall determine his or her own organization and methods of procedure in accordance with the provisions of this article. For the purpose of ascertaining the correctness of any return or for the purpose of making an estimate of the tax due from any taxpayer, the executive director has the power to examine or cause to be examined by any employee, agent, or representative designated by him or her for that purpose any books, papers, records, or memoranda bearing upon the matters required to be included in the return. In the exercise of rule-making authority as to article 29 of this title, as granted by the general assembly pursuant to this subsection (1), the executive director, in interpreting section 39-29-107.5 (1) (c), shall not have authority to reduce the amount of any approved contributions not previously credited by applying the amount of any additional percentage previously allowed pursuant to said section. In the exercise of rule-making authority as to article 29 of this title, as granted by the general assembly pursuant to this subsection (1), the executive director may not readopt any rule, or portion thereof, disapproved on or after July 1, 1982, by the general assembly pursuant to section 24-4-103 (8) (d), C.R.S., without the approval of the general assembly.

(2) If any taxpayer refuses voluntarily to furnish any of the foregoing information when requested by the executive director of the department of revenue or his employee, agent, or representative, the executive director, by subpoena issued under his hand, may require the attendance of the taxpayer and the production by him of any of the foregoing information in his possession and may administer an oath to him and take his testimony. If the taxpayer fails or refuses to respond to said subpoena and give testimony, the executive director may apply to any judge of the district court of the state of Colorado for an attachment against such taxpayer as for contempt, and said judge may cause arrest of such person, and upon hearing, said judge has, for the purpose of enforcing obedience to the requirements of said subpoena, power to make such order as, in his discretion, he deems consistent with the law for punishment of contempts.

(3) If the executive director of the department of revenue is unable to secure from the taxpayer information relating to the correctness of the taxpayer's return or the amount of the income of the taxpayer, the executive director may apply to any judge of the district court

of the state of Colorado for the issuance of subpoenas to such other persons as the executive director believes may have knowledge in the premises, and, upon making a showing satisfactory to the court that the taxpayer cannot be found, or evades service of subpoena, or fails or refuses to produce his records or give testimony, or is unable to furnish such records or testimony, the judge has power, after service of summons upon the persons named in the petition of the executive director, after written notice mailed to the taxpayer to his last-known address as set forth in the records of the department of revenue, and after hearing, to cause the issuance of subpoenas under the seal of the court to the persons sought to be so summoned requiring any of them to appear before said executive director and give testimony relating to said taxpayer's return or income. In case any of said persons so served with subpoena fail to respond thereto, the judge may proceed against such persons as in cases of contempt.

(3.5) (a) If any retailer that does not collect Colorado sales tax refuses voluntarily to furnish any of the information specified in subsection (1) of this section when requested by the executive director of the department of revenue or his or her employee, agent, or representative, the executive director, by subpoena issued under the executive director's hand, may require the attendance of the retailer and the production by him or her of any of the foregoing information in the retailer's possession and may administer an oath to him or her and take his or her testimony. If the retailer fails or refuses to respond to said subpoena and give testimony, the executive director may apply to any judge of the district court of the state of Colorado to enforce such subpoena by any appropriate order, including, if appropriate, an attachment against the retailer as for contempt, and upon hearing, said judge has, for the purpose of enforcing obedience to the requirements of said subpoena, power to make such order as, in his or her discretion, he or she deems consistent with the law for punishment of contempts.

(b) For purposes of this subsection (3.5), "retailer" shall have the same meaning as set forth in section 39-26-102 (8).

(c) (I) Each retailer that does not collect Colorado sales tax shall notify Colorado purchasers that sales or use tax is due on certain purchases made from the retailer and that the state of Colorado requires the purchaser to file a sales or use tax return.

(II) Failure to provide the notice required in subparagraph (I) of this paragraph (c) shall subject the retailer to a penalty of five dollars for each such failure, unless the retailer shows reasonable cause for such failure.

(d) (I) (A) Each retailer that does not collect Colorado sales tax shall send notification to all Colorado purchasers by January 31 of each year showing such information as the Colorado department of revenue shall require by rule and the total amount paid by the purchaser for Colorado purchases made from the retailer in the previous calendar year. Such notification shall include, if available, the dates of purchases, the amounts of each purchase, and the category of the purchase, including, if known by the retailer, whether the purchase is exempt or not exempt from taxation. The notification shall state that the state of Colorado requires a sales or use tax return to be filed and sales or use tax paid on certain Colorado purchases made by the purchaser from the retailer.

(B) The notification specified in sub-subparagraph (A) of this subparagraph (I) shall be sent separately to all Colorado purchasers by first-class mail and shall not be included with any other shipments. The notification shall include the words "Important Tax Document Enclosed" on the exterior of the mailing. The notification shall include the name of the retailer.

(II) (A) Each retailer that does not collect Colorado sales tax shall file an annual statement for each purchaser to the department of revenue on such forms as are provided or approved by the department showing the total amount paid for Colorado purchases of such purchasers during the preceding calendar year or any portion thereof, and such annual statement shall be filed on or before March 1 of each year.

(B) The executive director of the department of revenue may require any retailer that does not collect Colorado sales tax that makes total Colorado sales of more than one hundred thousand dollars in a year to file the annual statement described in sub-subparagraph (A) of this subparagraph (II) by magnetic media or another machine-readable form for that year.

(III) (A) Failure to send the notification required in subparagraph (I) of this paragraph (d) shall subject the retailer to a penalty of ten dollars for each such failure, unless the retailer shows reasonable cause for such failure.

(B) Failure to file the annual statement required in sub-subparagraph (A) of subparagraph (II) of this paragraph (d) shall subject the retailer to a penalty of ten dollars for each purchaser that should have been included in such annual statement, unless the retailer shows reasonable cause for such failure.

(4) Regulations adopted, amended, or rescinded by the executive director of the department of revenue shall be effective in the manner and at the time prescribed by the executive director, subject to the provisions of article 4 of title 24, C.R.S.

(5) Subject to the provisions of this article and the state personnel system regulations, the executive director of the department of revenue is authorized to appoint and prescribe the duties and powers of such officers, accountants, experts, and other persons as may be necessary in the performance of his duty. He may delegate to any such person so appointed such power as he deems reasonable and proper for the effective administration of this article and shall bond, in a sufficient amount, any person handling money under this article.

(6) Members of the department of revenue shall each give bond to the state of Colorado in the sum of five thousand dollars conditioned upon the faithful performance of their duties under the provisions of this article.

(7) (a) Any officer or employee of the department shall be dismissed from office or discharged from employment if, while performing functions related to any revenue law of the state of Colorado, he:

(I) Extorts or willfully oppresses any person through use of his actual or apparent authority;

(II) Knowingly demands other or greater sums than are authorized by law or receives any fee, compensation, or reward, except as prescribed by law, for the performance of any duty;

(III) With intent to defeat the application of any provision of this title, makes opportunity for any person to defraud the state of Colorado by intentionally failing to perform any of the duties of his office or employment;

(IV) Conspires or colludes with any other person to defraud the state of Colorado;

(V) Knowingly makes opportunity for any person to defraud the state of Colorado;

(VI) Commits or omits to do any act with the intent to enable any other person to defraud the state of Colorado;

(VII) Makes or signs any fraudulent entry in any book or makes or signs any fraudulent certificate, return, or statement;

(VIII) Fails to report in writing to the executive director of the department of revenue or his designee any knowledge or information he has concerning a violation of any revenue law by any person or a fraud committed by any person against the state of Colorado under any revenue law; or

(IX) Demands, accepts, or attempts to collect, directly or indirectly, as payment, gift, or otherwise any sum of money or other thing of value for the compromise, adjustment, or settlement of any charge or complaint for any violation or alleged violation of law, except as otherwise expressly authorized by law.

(b) Any officer or employee who violates any of the provisions of paragraph (a) of this subsection (7) is guilty of a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S. The court may in its discretion award out of any fine imposed an amount, not in excess of one-half thereof, for the use of the informer, if any, in any such case who shall be ascertained by the judgment of the court. The court also shall render judgment against the said officer or employee for the amount of damages sustained in favor of the party injured.

(8) The executive director is authorized to waive, for good cause shown, any penalty or interest assessed on any tax administered under the provisions of this article, and interest imposed in excess of the rate imposed under section 39-21-110.5 shall be deemed a penalty.

(9) The executive director shall have such other powers, duties, and functions as are prescribed for heads of principal departments in the "Administrative Organization Act of 1968", article 1 of title 24, C.R.S.

Source: **L. 65:** p. 1140, § 2. **C.R.S. 1963:** § 138-9-11. **L. 77:** (1) amended and (7) added, pp. 842, 1772, §§ 6, 1, effective July 1. **L. 81:** (3) amended, p. 1869, § 1, effective May 13. **L. 82:** Entire section amended, p. 558, § 2, effective April 6. **L. 89:** (8) added, p. 1497, § 1, effective June 7; (7)(b) amended, p. 852, § 143, effective July 1. **L. 94:** (9) added, p. 566, § 17, effective April 6. **L. 2001:** (1) amended, p. 780, § 12, effective June 1. **L. 2002:** (7)(b) amended, p. 1556, § 347, effective October 1. **L. 2009:** (1) amended, (HB 09-1053), ch. 159, p. 692, § 15, effective August 5. **L. 2010:** (3.5) added, (HB 10-1193), ch. 9, p. 55, § 2, effective February 24.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (7)(b), see section 1 of chapter 318, Session Laws of Colorado 2002.

ANNOTATION

Law reviews. For article, "Balancing Investigative Powers and Privacy Rights", see 14 Colo. Law. 947 (1985). For article, "Taxation", which discusses a Tenth Circuit decision dealing with the failure to produce documents, see 65 Den. U. L. Rev. 635 (1988).

Section not violative of taxpayer's privacy expectations. This section on its face does not violate in an unreasonable manner a taxpayer's expectation of privacy in his bank records. *Charnes v. DiGiacomo*, 612 P.2d 1117 (Colo. 1980).

Use of civil subpoena proper despite intended criminal investigation. The use of a civil subpoena by the department of revenue pursuant to this section is proper despite the taxpayer's contention that the department of revenue intends to pursue a criminal action against him and that the records sought by the subpoena are for the criminal investigation. *Charnes v. DiGiacomo*, 612 P.2d 1117 (Colo. 1980).

Burden on director to justify subpoena. A motion to quash a subpoena issued pursuant to

subsection (3) requires the director of the department of revenue to justify access to the taxpayer's bank records under the standards of that subsection. *Charnes v. DiGiacomo*, 612 P.2d 1117 (Colo. 1980).

Former regulation relating to personal exemption of head of family held valid. *State Treasurer v. Ellis*, 115 Colo. 154, 170 P.2d 283 (1946).

Department regulation attempting to change legislative intent invalid. *Weed v. Occhiato*, 175 Colo. 509, 488 P.2d 877 (1971).

Regulations may not modify existing statutes. A regulation must further the will of the general assembly and may not modify or contravene an existing statute. *Miller Int'l, Inc. v. Dept. of Rev.*, 646 P.2d 341 (Colo. 1982).

Executive director authorized to delegate power to deputy director to conduct administrative hearings. *Manka v. Tipton*, 805 P.2d 1203 (Colo. App. 1991).

Applied in *Union P.R.R. v. Heckers*, 181 Colo. 374, 509 P.2d 1255 (1973); *Montgomery Ward & Co. v. Dept. of Rev.*, 628 P.2d 85 (Colo. 1981).

39-21-113. Reports and returns - repeal. (1) (a) It is the duty of every person, firm, or corporation liable to the state of Colorado for any tax or any charge on oil and gas production imposed pursuant to articles 23.5 to 29 of this title or article 3 of title 42, C.R.S., to keep and preserve for a period of three years such books, accounts, and records as may be necessary to determine the amount of liability.

(b) It is the duty of every person, firm, or corporation liable to the state of Colorado for any tax imposed on income or gifts or a report in connection therewith to keep and preserve for a period of four years following the due date of the return or the payment of said tax such books, accounts, and records as may be necessary to determine the amount of such tax liability.

(c) All such books, accounts, and records shall be open for examination at any time by the executive director of the department of revenue or his duly authorized agents.

(2) In the case of a person, firm, or corporation which does not keep the necessary books, accounts, and records within the state, it shall be sufficient if such person, firm, or corporation produces within this state such books, accounts, records, or such information as shall be reasonably required by the executive director of the department of revenue for examination by him or, an agent duly authorized by him or, in lieu thereof, if said books, accounts, and records are open for inspection, by an agent authorized by the executive director at the place where such books, accounts, and records are kept.

(3) All reports and returns of taxes received by the department, other than income tax

returns, covered by this article shall be preserved for three years and thereafter until the executive director of the department of revenue orders them to be destroyed. Income tax returns received by the department of revenue shall be preserved for four years and thereafter until the executive director orders them to be destroyed.

(4) (a) Except in accordance with judicial order or as otherwise provided by law, the executive director of the department of revenue and his agents, clerks, and employees shall not divulge or make known in any way any information obtained from any investigation conducted by the department or its agents or disclosed in any document, report, or return filed in connection with any of the taxes covered by this article. The officials charged with the custody of such documents, reports, investigations, and returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the executive director in an action or proceeding under the provisions of any such taxing statutes to which the department is a party or on behalf of any party to any action or proceeding under the provisions of such taxing statutes when the report of facts shown thereby is directly involved in such action or proceeding, in either of which events the court may require the production of, and may admit in evidence, so much of said reports or of the facts shown thereby as are pertinent to the action or proceeding and no more.

(b) Nothing in this section shall be construed to prohibit the delivery to a person or his or her duly authorized representative of a copy of any return or report filed in connection with his or her tax. Such copies may be certified by the executive director of the department of revenue or the head of any group, division, or subordinate department, as appointed by the executive director in accordance with article 35 of title 24, C.R.S., and when so certified shall be evidence equally with and in like manner as the originals and may be received by the courts of this state as evidence of the contents of the originals.

(c) It is unlawful for any members of the department of revenue and any deputy, agent, clerk, or other officer or employee engaged in any administration which is governed by this article to engage in the business or profession of tax accounting or to accept employment, with or without consideration, from any person, firm, or corporation for the purpose, directly or indirectly, of preparing tax returns or reports required by the laws of the state of Colorado, by any other state, or by the United States government or to accept any employment for the purpose of advising, preparing material or data, or the auditing of books or records to be used in an effort to defeat or cancel any tax or part thereof that has been assessed by the state of Colorado, any other state, or by the United States government.

(d) The executive director and any agent, clerk, or employee of the department may:

(I) Disclose the name of a tax return preparer to the state board of accountancy in accordance with section 39-22-621 (2) (g.5) under the circumstances described in that section; and

(II) Disclose to a tax return preparer who is potentially subject to a penalty under section 39-22-621 (2) (g.5) the taxpayer name, account number, alleged understatement of liability, and applicable laws pertaining to the understatement giving rise to the potential imposition of the penalty.

(5) Nothing in this section shall be construed to prohibit the publication of statistics, so classified as to prevent the identification of particular reports or returns and the items thereof, or the inspection of returns by the attorney general or other legal representatives of the state. Nothing in this section shall be construed to prohibit the release of information for the periodic publication of gasoline gallonage reports based on reports and returns filed under the gasoline tax or special fuel tax statutes and containing summaries of the quantities of liquid fuel marketed in Colorado, specifying the suppliers, distributors, and consumers of such gasoline or special fuel, and other information relating to gasoline tax or special fuel tax.

(6) Except as provided in subsections (5), (7), (8), (9), and (10) of this section, any person who violates any provision of subsection (4) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars, and, if the offender is an officer or employee of the state, he shall be dismissed from office.

(7) Notwithstanding the provisions of this section, the executive director of the department of revenue shall supply any county assessor of the state of Colorado or his representative with information relating to ad valorem tax assessments or valuation of property within his county and, in his discretion, may permit the commissioner of internal revenue of the United States, or the proper official of any state imposing a similar tax, or the authorized representative of either to inspect the reports and returns of taxes covered by this article.

(8) Notwithstanding the provisions of this section, the executive director of the department of revenue may provide the division of unemployment insurance with any information obtained pursuant to this section and, in connection therewith, may enter into an agreement with the division of unemployment insurance providing for payment of the costs incurred in connection with supplying the information and providing for periodic updating of the information supplied. Information thus supplied to the division of unemployment insurance is subject to the rules of confidentiality set forth in section 8-72-107 (1), C.R.S., to the same extent as information supplied by employers to the division of unemployment insurance.

(9) Notwithstanding the provisions of this section, the executive director of the department of revenue shall provide the department of human services with any information obtained pursuant to this section which is necessary to implement the procedure to offset state income tax refunds against past-due child support pursuant to section 26-13-111, C.R.S., and section 39-21-108.

(10) Notwithstanding the provisions of this section, the executive director of the department of revenue shall supply any county assessor of the state of Colorado or his representative with information obtained through audit of reports and returns covered by this article dealing with such taxpayers' ability to pay or to properly accrue any ad valorem tax collected by such county assessor.

(11) Notwithstanding the provisions of this section, the executive director of the department of revenue shall supply the department of corrections with any information obtained pursuant to this section which is necessary to implement the procedure to offset state sales tax refunds against restitution and costs pursuant to section 39-22-120 (10) or 39-22-2003 (9).

(12) (a) Notwithstanding the provisions of this section, on and after October 1, 2002, for the purpose of enabling the state treasurer to make income tax refunds pursuant to the provisions of the "Unclaimed Property Act", article 13 of title 38, C.R.S., the department shall supply the state treasurer with information as required by section 39-21-108 (5).

(b) Repealed.

(13) Notwithstanding the provisions of this section, the executive director shall provide the aeronautics division created in section 43-10-103, C.R.S., with information obtained from an audit of or disclosed in any document, report, or return filed in connection with any of the taxes collected pursuant to sections 39-26-104, 39-26-715 (1) (a) (I), 39-26-202, 39-27-102, and 39-27-112 on gasoline or fuel used in aviation. The department shall only release information regarding the portion of said tax revenues that will be credited to the aviation fund created in section 43-10-109, C.R.S. Any information provided to the division pursuant to this subsection (13) shall remain confidential, and all employees of the division shall be subject to the limitations set forth in subsection (4) of this section and the penalties contained in subsection (6) of this section.

(14) Notwithstanding the provisions of this section, the executive director of the department of revenue shall supply the state court administrator with taxpayer names, addresses, year of birth, if available, and other identifying information obtained pursuant to this section for the purpose of compiling the master juror list pursuant to section 13-71-107 (1), C.R.S. Those persons who receive taxpayer information under this subsection (14) shall be subject to the provisions of this section, including limitations in subsection (4) of this section and penalties in subsection (6) of this section regarding disclosure of taxpayer information.

(15) Notwithstanding the provisions of this section, the executive director shall provide the legislative council staff with any information that the staff deems necessary to make the calculation required in section 39-29-109.5 (2). Any information provided to the staff shall

remain confidential, and all staff employees shall be subject to the limitations set forth in subsection (4) of this section and the penalties contained in subsection (6) of this section.

(16) (a) Notwithstanding the provisions of this section, the executive director of the department may provide the office of economic development with any information that is necessary to prepare the report required pursuant to section 39-22-303.5 (10).

(b) This subsection (16) is repealed, effective July 1, 2015.

(17) Notwithstanding any other provision of this section, the executive director may require that such detailed information regarding a claim for a credit for the donation of a conservation easement in gross pursuant to section 39-22-522 and any appraisal submitted in support of the credit claimed be given to the division of real estate in the department of regulatory agencies and the conservation easement oversight commission created pursuant to section 12-61-721 (1), C.R.S., as the executive director determines is necessary in the performance of the department's functions relating to the credit. The executive director may provide copies of any appraisal and may file a complaint regarding any appraisal as authorized pursuant to section 39-22-522 (3.3). Notwithstanding the provisions of part 2 of article 72 of title 24, C.R.S., in order to protect the confidential financial information of a taxpayer, the executive director shall deny the right to inspect any information or appraisal required in accordance with the provisions of this subsection (17).

(17.5) (a) Notwithstanding the provisions of this section, the executive director may provide such detailed information pertinent to a claim for a credit for the donation of a conservation easement pursuant to section 39-22-522 to taxpayers, including donors and transferees, with cases involving common or related issues of fact or law. The executive director or the executive director's duly authorized agents may also provide such information to the parties to a consolidated administrative hearing pursuant to section 39-22-522.5 (5) (a) as necessary and appropriate for the efficient and fair resolution of disputes.

(b) Persons who receive taxpayer information pursuant to paragraph (a) of this subsection (17.5) shall be subject to the provisions of this section, including the limitations in subsection (4) of this section and the penalties in subsection (6) of this section regarding disclosure of taxpayer information.

(18) Notwithstanding the provisions of this section, the executive director may provide to the department of local affairs information obtained pursuant to this section that is necessary to verify the information submitted to the department of local affairs pursuant to section 39-29-110 (1) (d) (I) (B) and that is sufficient to allow the department of local affairs to efficiently distribute moneys as required by section 39-29-110 (1) (c). The department shall not release any information to the department of local affairs that is not needed to verify information or distribute moneys. With the exception of taxpayer contact information, any information provided to the department of local affairs pursuant to this subsection (18) shall remain confidential, and all persons within the department of local affairs shall be subject to the limitations set forth in subsection (4) of this section and the penalties contained in subsection (6) of this section.

(19) Notwithstanding the provisions of this section, the executive director shall publish the lists of wholesalers as specified in section 39-28-115 and distributors as specified in section 39-28.5-112.

(20) Notwithstanding the provisions of this section, the executive director shall provide the Colorado office of economic development with information as required pursuant to section 24-48.5-112 (2) (d), C.R.S.

(21) Notwithstanding the provisions of this section, the executive director of the department of revenue shall provide information to other state agencies as required pursuant to section 39-21-108 (3).

(22) Notwithstanding the provisions of this section, the executive director shall supply the Colorado office of economic development with information relating to the actual amount of any enterprise zone tax credit claimed pursuant to article 30 of this title as well as information submitted to and aggregated by the department pursuant to section 39-30-111 (2) and (3) regarding the carryforward of such income tax credits. Any information provided to the office pursuant to this subsection (22) shall remain confidential, and all office employees shall be subject to the limitations set forth in subsection (4) of this section

and the penalties contained in subsection (6) of this section. Nothing in this subsection (22) shall prevent the office from making aggregated data regarding enterprise zone tax credits available.

Source: **L. 65:** p. 1142, § 2. **C.R.S. 1963:** § 138-9-12. **L. 66:** p. 198, § 1. **L. 67:** p. 839, § 2. **L. 75:** (4)(a) amended, p. 1483, § 1, effective June 20. **L. 77:** (1)(b) amended, p. 842, § 7, effective July 1; (1)(a) amended, pp. 1768, 1854, §§ 8, 10, effective January 1, 1978. **L. 79:** (1)(a) and (5) amended, p. 1501, § 26, effective January 1, 1980. **L. 81:** (8) added, p. 488, § 16, effective July 1. **L. 82:** (6) amended, p. 629, § 42, effective April 2. **L. 85:** (9) added, p. 604, § 23, effective July 1. **L. 86:** (1)(a) and (6) amended and (10) added, pp. 1111, 937, §§ 9, 2, effective July 1. **L. 89:** (1)(a) amended, p. 1596, § 11, effective July 1, 1993. **L. 90:** (1)(a) amended, p. 1725, § 13, effective May 1; (1)(a) amended, p. 1725, § 14, effective July 1, 1993. **L. 94:** (9) amended, p. 3136, § 300, effective July 1. **L. 98, 2nd Ex. Sess.:** (11) added, p. 8, § 5, effective September 16. **L. 99:** (11) amended, p. 1318, § 6, effective August 4. **L. 2000:** (4)(b) amended, p. 1639, § 19, effective June 1. **L. 2001:** (1)(a) amended, p. 780, § 13, effective June 1; (12) added, p. 619, § 5, effective August 8. **L. 2002:** (13) added, p. 63, § 2, effective March 22; (14) added, p. 986, § 2, effective June 1; (1)(a) amended, p. 1362, § 17, effective July 1. **L. 2004:** (13) amended, p. 1044, § 14, effective July 1; (12) amended, p. 315, § 4, effective August 4. **L. 2007:** (15) added, p. 1407, § 1, effective May 30. **L. 2008:** (4)(d) added, p. 433, § 1, effective July 1; (17) added, p. 2315, § 7, effective July 1; (16) added, p. 954, § 4, effective January 1, 2009. **L. 2009:** (1)(a) amended, (HB 09-1053), ch. 159, p. 692, § 16, effective August 5; (18) added, (HB 09-1148), ch. 42, p. 162, § 1, effective August 5; (19) added, (HB 09-1173), ch. 372, p. 2016, § 2, effective August 5; (20) added, (HB 09-1105), ch. 378, p. 2059, § 3, effective September 1; (21) added, (HB 09-1137), ch. 308, p. 1663, § 15, effective September 1. **L. 2010:** (12)(b) repealed, (SB 10-212), ch. 412, p. 2032, § 1, effective July 1; (22) added, (SB 10-162), ch. 395, p. 1879, § 4, effective January 1, 2012. **L. 2011:** (17.5) added, (HB 11-1300), ch. 193, p. 752, § 3, effective May 19; (22) amended, (HB 11-1303), ch. 264, p. 1175, § 92, effective January 1, 2012. **L. 2012:** (8) amended, (HB 12-1120), ch. 27, p. 113, § 32, effective June 1.

Editor's note: (1) Amendments to subsection (1)(a) by House Bill 77-1076 and Senate Bill 77-144 were harmonized.

(2) The effective date for amendments to subsection (8) by House Bill 12-1120 (chapter 27, Session Laws of Colorado 2012) was changed from August 8, 2012, to June 1, 2012, by House Bill 12S-1002 (First Extraordinary Session, chapter 2, p. 2432, Session Laws of Colorado 2012.)

Cross references: (1) For the legislative declaration stating the purpose of, and the provision directing legislative staff agencies to conduct, a post-enactment review pursuant to § 2-2-1201 scheduled within two years after July 1, 2008, see sections 1 and 10 of chapter 448, Session Laws of Colorado 2008. To obtain a copy of the review, once completed, view Colorado Legislative Council's web site.

(2) For the legislative declaration contained in the 2009 act adding subsection (20), see section 1 of chapter 378, Session Laws of Colorado 2009.

ANNOTATION

Law reviews. For article, "Taxation", which discusses a Tenth Circuit decision dealing with the good faith failure to file returns, see 65 Den. U. L. Rev. 641 (1988).

Subsection (4)(a) is applicable in proceedings other than those under income tax provisions. *People v. Vesely*, 41 Colo. App. 325, 587 P.2d 802 (1978).

Party seeking income tax return bears burden of showing compelling need. If a grand jury issues a subpoena duces tecum and the trial court orders compliance after an evidentiary

hearing, then the director of the department of revenue must produce the tax returns in question, but in all cases the party seeking the income tax return bears the burden of showing a compelling need for it. Absent a compelling need, the subpoena duces tecum should be quashed. *Losavio v. Robb*, 195 Colo. 533, 579 P.2d 1152 (1978); *Alcon v. Spicer*, 113 P.3d 735 (Colo. 2005).

Confidentiality factor in deciding reasonableness of subpoena duces tecum. Although the policy of confidentiality set forth in this

section does not amount to a testimonial privilege, it should carry great weight in deciding whether a subpoena duces tecum is unreason-

able or oppressive. *Losavio v. Robb*, 195 Colo. 533, 579 P.2d 1152 (1978).

39-21-114. Methods of enforcing collection. (1) The executive director of the department of revenue may issue a warrant executed either with his manual signature or with his facsimile signature in accordance with the "Uniform Facsimile Signature of Public Officials Act", article 55 of title 11, C.R.S., directed to any employee, agent, or representative of the department, sometimes in this section referred to collectively as "agent", commanding him to distrain, seize, and sell the personal property of the taxpayer, except such personal property as is exempted from execution and sale by any statute of this state, for the payment of the tax due, together with any penalties and interest accrued thereon and the cost of execution:

(a) When any deficiency in tax is not paid within thirty days from the mailing of notice and final determination therefor and no appeal from such deficiency has been docketed with any district court of this state within said period; or

(b) When any other amount of tax, penalty, or interest is not paid within ten days from the mailing of demand for payment thereof; or

(c) Immediately upon making of a jeopardy assessment or of the issuance of a demand for payment, as provided in section 39-21-111.

(d) (Deleted by amendment, L. 2002, p. 1362, § 18, effective July 1, 2002.)

(2) (a) The agent charged with the collection shall make or cause to be made an account of the goods or effects distrained, a copy of which, signed by the agent making such distraint, shall be left with the owner or possessor, or at his usual place of abode with some member of his family over the age of eighteen years, or at his usual place of business with his stenographer, bookkeeper, or chief clerk, or, if the taxpayer is a corporation, shall be left with any officer, manager, general agent, or agent for process, with a note of the sum demanded and the time and place of sale; and shall forthwith cause to be published a notice of the time and place of sale, together with a description of the property to be sold, in some newspaper of general circulation within the county wherein distraint is made or, in lieu thereof and in the discretion of the executive director of the department of revenue, the agent shall cause such notice to be publicly posted at the courthouse of the county wherein such distraint is made, copies thereof to be posted in at least two other public places within said county. The time fixed for the sale shall not be less than ten days nor more than sixty days from the date of such notification to the owner or possessor of the property and the publication or posting of such notices. Said sale may be adjourned from time to time by said agent if he deems it advisable but not for a time to exceed in all ninety days from the date first fixed for the sale. When any personal property is advertised for sale under distraint as aforesaid, the agent making the seizure shall proceed to sell such property at public auction, offering the same at not less than a fair minimum price, including the expenses of making the seizure and of advertising the sale, and, if the amount bid for the property at the sale is not equal to the fair minimum price so fixed, the agent conducting the sale may declare the same to be purchased by him for the state. The property so purchased may be sold by the agent under such regulations as may be prescribed by the executive director. In any case of distraint for the payment of taxes, the goods, chattels, or effects so distrained shall be restored to the owner or possessor if, prior to the sale, the amount due is paid together with the fees and other charges or may be redeemed by any person holding a chattel paper or other evidence of right of possession.

(b) In all cases of sale, the agent making the sale shall issue a certificate of sale to each purchaser, and such certificate shall be prima facie evidence of the right of the agent to make such sale and conclusive evidence of the regularity of his proceedings in making the sale and shall transfer to the purchaser all right, title, and interest of such delinquent in and to the property sold; and, where such property consists of certificates of stock in the possession of the agent, the certificate of sale shall be notice, when received, to any corporation, company, or association of said transfer, and said certificate of such sale shall be authority for such corporation, company, or association to record the transfer on its books and records; and, where the subject of sale is securities or other evidences of debt in the

possession of the agent, the certificate of sale shall be good and valid evidence of title in the person holding the same, as against any other person. Any surplus remaining above the taxes, penalties, interest, costs, and expenses of making the seizure and of advertising the sale shall be returned to the owner or such other person having a legal right thereto, and, on demand, the executive director of the department of revenue shall render an account in writing of the sale.

(3) The agent of the executive director of the department of revenue to whom a warrant has been issued may file with the clerk of any district court within this state a copy of said warrant, and thereupon the clerk shall enter in the judgment docket, in appropriate columns, the name of the taxpayer mentioned in the warrant, the amount of the tax, or a portion thereof, together with interest and penalties for which the warrant is issued, and the date upon which such copy is filed and shall issue and deliver a transcript of such judgment to the agent without cost. Said transcript so issued and delivered may be filed with the clerk and recorder of any county, and, from the time of such filing, such judgment shall become a lien upon all the real property of the judgment debtor in such county owned by him at the time or which he may afterwards acquire until said lien expires. The lien shall continue for six years from the entry of the judgment unless the judgment is previously satisfied, all in the same manner as is provided by statute for making a judgment of a court of record a lien on real property. The judgment so entered shall have the same force and effect as other judgments of a court of record, and execution upon the real and personal property of the judgment debtor and redemption thereof may be had as provided by law with respect to other judgments. The executive director and his agent may cause execution to be had thereon by the proper sheriff or other officer, and such sheriff or other officer shall be entitled to the same fees for his services to be collected in the same manner as in the case of other executions.

(4) Any employee, agent, or representative of the executive director of the department of revenue to whom warrant has been issued may file a notice of lien in such form as the executive director may prescribe with the person in possession of any personal property or rights to property belonging to the taxpayer, and the filing of such notice of lien shall operate as a lien upon such personal property or rights to property from the date of such filing. Any costs incurred by the person in possession of such property or rights to property by reason of compliance with said notice of lien shall be paid by the executive director and recovered by him out of any proceeds of sale of the property subject thereto. The executive director may release said lien as to any part or all of the property or rights to property covered by any such lien upon such terms as he may deem proper.

(5) Nothing in this section shall be construed to abrogate or diminish the rights of bona fide purchasers, lienors, or pledgees for value and without notice.

(6) The executive director of the department of revenue may be made a party defendant in an action at law or a suit in equity by any person aggrieved by the unlawful seizure or sale of his personal property, but only the state of Colorado shall be responsible for any final money judgment secured against said executive director; and said judgment, so secured, shall be paid or satisfied out of the tax refund provided by section 39-21-108 (2) upon presentation by the judgment creditor to the executive director of two certified copies of said final judgment.

(7) If any person, firm, or corporation liable for the payment of any tax covered by this article has repeatedly failed, neglected, or refused to pay the same within the time specified for such payment and the department has been required to issue distraint warrants to enforce the collection of any taxes due from such taxpayer, the executive director of the department of revenue is authorized to assess and collect the amount of such taxes due, together with all interest and penalties thereon provided by law, and also the following additional penalties for recurring distraint warrants:

(a) Three, four, or five consecutive distraint warrants issued: Fifteen percent of the delinquent taxes, interest, and penalties due or the sum of twenty-five dollars, whichever amount is greater;

(b) Six or more consecutive distraint warrants issued: Thirty percent of the delinquent taxes, interest, and penalties due or the sum of fifty dollars, whichever amount is greater.

(8) (a) In order to facilitate and expedite the collection of taxes more than six months overdue from a taxpayer who is not a resident of nor domiciled in the state of Colorado, the executive director may enter into a contract with a debt collection agency or an attorney for the collection of the taxes due from such taxpayer together with any penalties and interest accrued thereon.

(b) For purposes of paragraph (a) of this subsection (8), the executive director may contract with a debt collection agency or an attorney doing business in the state of Colorado or in any other state; except that, prior to entering into such contract with a debt collection agency, the executive director shall require that the debt collection agency file a bond in the amount of one hundred thousand dollars, which bond shall run to the state of Colorado for the purpose of guaranteeing compliance with the terms of the contract. Such bond shall be executed by the debt collection agency as principal and by a corporation, which is licensed to transact the business of fidelity and surety insurance, as surety.

(b.5) In order to facilitate and expedite the collection of taxes more than twelve months overdue from a taxpayer who is a resident of and domiciled in the state of Colorado, the executive director may enter into contracts with two or more debt collection agencies or attorneys for the collection of the taxes due from such taxpayer, together with any penalties and interest accrued thereon pursuant to the procurement provisions of article 103 of title 24, C.R.S. For the purposes of this paragraph (b.5), the executive director may contract with debt collection agencies or attorneys doing business in the state of Colorado or in any other state; except that, prior to entering into such a contract with a debt collection agency, the executive director shall require that the debt collection agency file a bond in the amount of no less than one hundred thousand dollars and no more than five hundred thousand dollars, which bond shall run to the state of Colorado for the purpose of guaranteeing compliance with the terms of the contract. Such bond shall be executed by a debt collection agency as principal and by a corporation, which is licensed to transact the business of fidelity and surety insurance, as surety.

(c) (I) Each contract entered into with a debt collection agency or an attorney shall specify that fees for services rendered shall be based on the total amount of delinquent taxes, including accrued penalties and interest, that is actually collected; however, under no circumstance shall the fees for services rendered exceed twenty percent of the total amount of delinquent taxes, including accrued penalties and interest, that is actually collected. Any fees for services rendered shall be collected by the agency or attorney in addition to the total amount of delinquent taxes, including accrued penalties and interest, actually collected. Such fees for services rendered shall be shown to the taxpayer as a separate and distinct item, and, when added, such fees for services rendered shall be a debt from the taxpayer to the agent or attorney until paid and shall be recoverable at law in the same manner as other debts.

(II) If the department enters into a contract with a debt collection agency or an attorney to collect delinquent taxes, including accrued penalties and interest, and any fees for services rendered as specified in subparagraph (I) of this paragraph (c) and the contract specifies that the department is required to collect the fees for services rendered if the taxpayer chooses to pay the total amount owed directly to the department, the department shall become the agent for the agency or attorney and collect the agency's or attorney's fees for services rendered on behalf of the agency or attorney.

(III) If a taxpayer makes a payment toward the total amount a debt collection agency or attorney is attempting to collect, including delinquent taxes, accrued penalties and interest, and any fees for services rendered as specified in subparagraph (I) of this paragraph (c), such payment shall be allocated among delinquent taxes, accrued penalties and interest, and fees for services rendered according to the rules or procedures of the department and the contract between the department and the agency or attorney. The taxpayer may not designate the allocation of the payment.

(IV) No costs except court costs shall be reimbursed unless authorized in such contract. If a debt collection agency or an attorney files a civil suit to collect delinquent taxes, including accrued penalties and interest, suit shall be brought in the name of the executive director of the department of revenue of the state of Colorado. When suit is brought by an agency or attorney, court costs are reimbursable by the department to the agency or attorney,

but fees for services of legal representation incurred by such agency or attorney on behalf of the department for the purpose of such suit shall not be reimbursable.

(d) A debt collection agency or an attorney shall, pursuant to contract, remit the total amount of delinquent taxes, including accrued penalties and interest, collected, less allowable reimbursable costs, to the executive director within thirty days from the date the moneys are collected from the taxpayer.

(e) The executive director may prescribe forms to be used in implementing this subsection (8).

(9) The executive director, under such terms and conditions as he deems advisable, may enter into a reciprocal agreement with an agency of another state for the collection of delinquent taxes owed by individuals who are nonresidents of the state of Colorado. Under such an agreement, the agency would agree to collect delinquent taxes owed to the state of Colorado by taxpayers who are residing or domiciled in that state. In return, the executive director would undertake the collection of taxes of the same or similar type owed to the other state by taxpayers residing or domiciled in the state of Colorado.

(10) (a) The executive director is authorized to enter into an agreement with the controller for the purpose of collecting delinquent state taxes through the vendor offset program established pursuant to section 24-30-202.4 (3.5) (a), C.R.S.

(b) Each agreement entered into with the controller shall specify that fees for services rendered shall be based on the total amount of delinquent taxes, including accrued penalties and interest, that is actually collected through the vendor offset program established pursuant to section 24-30-202.4 (3.5) (a), C.R.S.

(c) The controller shall, pursuant to agreement, remit the total amount actually offset from a vendor's account pursuant to section 24-30-202.4 (3.5) (a), less fees for services rendered and allowable costs, to the executive director within thirty days after the date the moneys are offset from the vendor's account.

Source: L. 65: p. 1143, § 2. C.R.S. 1963: § 138-9-13. L. 76: IP(1) amended, p. 776, § 1, effective April 3. L. 77: (1)(d) added and (7) R&RE, pp. 842, 1774, §§ 8, 1, effective July 1. L. 84: (8) and (9) added, p. 1015, § 1, effective April 12. L. 87: (8)(b), (8)(c), and (8)(d) amended and (8)(b.5) added, p. 1424, § 1, effective July 10. L. 97: (10) added, p. 945, § 5, effective July 1. L. 2002: (1)(c) and (1)(d) amended, p. 1362, § 18, effective July 1. L. 2010: (8)(c) and (8)(d) amended, (HB 10-1055), ch. 33, p. 124, § 1, effective March 22.

ANNOTATION

Law reviews. For article, "An Introduction to Tax Liens", see 13 Colo. Law. 399 (1984). For article, "Survey of Colorado Tax Liens", see 14 Colo. Law. 1765 (1985).

Judgment upon distraint warrant without service of process constitutional. A judgment entered upon a warrant of distraint as provided in subsection (3) without service of process upon the taxpayer is not invalid and void and does not deprive the taxpayer of his property without due process of law. *Liebhardt v. Dept. of Rev.*, 123 Colo. 369, 229 P.2d 655 (1951).

Lien for state income tax which predates federal tax lien has priority under federal law. *Eggleston v. Colo.*, 636 F. Supp. 1312 (D. Colo. 1986).

Taxpayer may proceed under subsection (6) or § 24-4-106, where a jeopardy assessment has been made without a notice of deficiency and a distraint warrant and seizure have been pursued under this section. *Flores*

v. Dept. of Rev., 802 P.2d 1175 (Colo. App. 1990).

State tax lien was not extinguished by merger when the state bought property at the tax sale to avoid sale for an inadequate price. Such action by the state supported inference that it intended to preserve its lien on the property. *U.S. v. State of Colo.*, 872 F.2d 338 (10th Cir. 1989).

In order to enforce liens for sales taxes, the department of revenue may activate its liens by recording the notice of delinquency pursuant to § 39-26-118 or by the more immediate means of distraint in accordance with this section. *ITT Diversified Credit Corp. v. Couch*, 669 P.2d 1355 (Colo. 1983).

Notice by publication held inadequate to advise secured lienholder of tax sale; lienholder was entitled to receive notice of tax sale by mail or personal service. Fact that secured lienholder might have taken steps to safeguard

its interest by requiring owner to file a bond is irrelevant to the issue of whether notice was adequate. *Omnibank Iliff, N.A. v. Tipton*, 843 P.2d 71 (Colo. App. 1992).

Where secured lienholder had known and conflicting claim, trial court erred in ruling that

owner of property seized by the department of revenue for nonpayment of tax and sold at tax sale was, as a matter of law, entitled to surplus proceeds from the tax sale. *Omnibank Iliff, N.A. v. Tipton*, 843 P.2d 71 (Colo. App. 1992).

39-21-115. Reciprocity with other states for collection of taxes provided. (1) Any state of the United States or any political subdivision thereof has the right to sue in the courts of the state of Colorado to recover any lawfully imposed taxes which may be owing it, whether or not the taxes have been reduced to judgment, when the like right is accorded to the state of Colorado and its political subdivisions by that state through statutory authority or granted as a matter of comity. The appropriate officials of such other states are authorized to bring action in the courts of this state for the collection of such taxes. The certificate of the secretary of state of such other state that such officials have the authority to collect the taxes to be collected by such action shall be the conclusive proof of authority.

(2) The attorney general or an appropriate official of any political subdivision of the state of Colorado may bring suit in the courts of other states to collect taxes legally due this state or any political subdivision thereof.

(3) "Taxes" as used in this section includes:

(a) Any tax assessments lawfully made, whether they are based upon a return or other disclosure of the taxpayer, or upon the information and belief of the taxing authority, or otherwise;

(b) Any penalties lawfully imposed pursuant to a taxing statute; and

(c) Interest charges lawfully added to the tax liability which constitutes the subject of the action.

(4) Repealed.

Source: L. 69: p. 1144, § 1. C.R.S. 1963: § 138-9-18. L. 2001: (4) added, p. 780, § 14, effective June 1. L. 2009: (4) repealed, (HB 09-1053), ch. 159, p. 692, § 17, effective August 5.

39-21-116. Closing agreements. (1) For the purpose of facilitating the settlement and distribution of estates, trusts, receiverships, or other fiduciary relationships, corporations, limited liability companies, and partnerships in the process of dissolution or which have been dissolved, the executive director of the department of revenue may agree with the fiduciary or surviving directors or limited liability company members or partnership members upon the amount of taxes due from the decedent, or from the decedent's estate, the trust, receivership, or other fiduciary relationship or corporation or limited liability company or partnership, for any of his or its taxable periods, under the provisions of the taxes covered by this article; and, except upon a showing of fraud, malfeasance, or misrepresentation of a material fact, payment in accordance with such agreement shall be full satisfaction of the taxes for the taxable periods to which the agreement relates. In addition, the executive director or any person authorized in writing by him may agree to enter into an agreement with any person, or the person or estate for whom he acts, relating to the liability of such person in respect of any tax within the provisions of this article for any prior taxable period. Any such agreement shall be final and conclusive; and, except upon a showing of fraud, malfeasance, or misrepresentation of a material fact, the case shall not be reopened as to matters agreed upon or the agreement modified by any officer, employee, or agent of this state; and, in any suit, action, or proceeding, such agreement, or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance therewith, shall not be annulled, modified, set aside, or disregarded.

(2) Except as provided in subsection (4) of this section, any personal representative of a decedent or of the estate of a decedent, or any trustee, receiver, or other person acting in a fiduciary capacity, or any director or officer of a corporation or any member of a partnership or limited liability company in the process of dissolution or which has been dissolved who distributes the estate or fund in his control without having first paid any taxes

covered by this article due from such decedent, decedent's estate, trust estate, fund, corporation, partnership, or limited liability company shall be personally liable to the extent of the property so distributed for any unpaid taxes of the decedent, decedent's estate, trust estate, receivership, corporation, partnership, or limited liability company covered by this article which may be assessed within the time limited by section 39-21-107.

(3) The distributee of a decedent's estate or of a trust estate or fund, the stockholder of any dissolved corporation, or the member of any dissolved partnership or limited liability company who receives any of the property of such decedent's estate, trust estate, fund, corporation, partnership, or limited liability company shall be liable, to the extent of the property so received, for any unpaid income tax of the decedent, decedent's estate, trust estate, fund, corporation, partnership, or limited liability company covered by this article which may be assessed within the time limited by section 39-21-107. Notice to such distributee, stockholder, partnership member, or limited liability company member shall be given in the same manner and within the time limit which would have been applicable had there been no distribution.

(4) (a) In case a tax covered by this article is due from a decedent, or from his estate, or from a corporation, limited liability company, or partnership, in order for personal liability under subsection (2) of this section to remain in effect, determination of the tax due shall be made and notice and demand therefor shall issue within eighteen months after written request for such determination, filed after the filing of the decedent's final return or filed after the filing of the return of the decedent's estate with respect to which such request is applicable, by any personal representative of such decedent or by the corporation, limited liability company, or partnership, filed after the filing of its return; but a request under this provision shall not extend the period of limitation otherwise applicable.

(b) This subsection (4) shall not apply in the case of a corporation, limited liability company, or partnership unless:

(I) Such request notifies the executive director of the department of revenue that the corporation, limited liability company, or partnership contemplates dissolution at or before the expiration of such eighteen-month period;

(II) The dissolution is begun in good faith before the expiration of such eighteen-month period; and

(III) The dissolution is completed.

(c) Upon the expiration of said eighteen-month period, without determination being made and notice and demand being issued, the personal representative of the decedent, the directors and officers of the corporation, or the members of the limited liability company or partnership no longer will be liable under the provisions of subsection (2) of this section.

Source: L. 65: p. 1146, § 2. C.R.S. 1963: § 138-9-14. L. 75: (1) amended, p. 1485, § 1, effective July 1. L. 77: Entire section amended, p. 1776, § 1, effective July 1. L. 90: Entire section amended, p. 451, § 30, effective April 18.

ANNOTATION

Law reviews. For article, "Income Taxes During Estate Administration", see 29 Dicta 19 (1952). For note, "The Tax Liability of the

Executor", see 28 Rocky Mt. L. Rev. 95 (1955). For article, "Administration of Testate Estates", see 29 Rocky Mt. L. Rev. 557 (1957).

39-21-116.5. Penalties. In addition to the personal liability provided in section 39-21-116, all officers of a corporation and all members of a partnership or a limited liability company required to collect, account for, and pay over any tax administered by this article who willfully fail to collect, account for, or pay over such tax or who willfully attempt in any manner to evade or defeat any such tax, or the payment thereof, are subject to, in addition to other penalties provided by law, a penalty equal to one hundred fifty percent of the total amount of the tax not collected, accounted for, paid over, or otherwise evaded. An officer of a corporation or a member of a partnership or a limited liability company shall be deemed to be subject to this section if the corporation, partnership, or limited liability company is subject to filing returns or paying taxes administered by this article and if such

officers of corporations or members of partnerships or limited liability companies voluntarily or at the direction of their superiors assume the duties or responsibilities of complying with the provisions of any tax administered by this article on behalf of the corporation, partnership, or limited liability company.

Source: L. 77: Entire section amended, p. 1777, § 2, effective July 1. L. 85: Entire section amended, p. 1253, § 3, effective January 1, 1986. L. 90: Entire section amended, p. 452, § 31, effective April 18.

ANNOTATION

Title of corporate president does not necessarily include the responsibility of tax compliance. This section is applicable only to those corporate officers responsible for tax compli-

ance who willfully fail to collect, account for, or pay taxes. *Hanson v. Colo. Dept. of Rev.*, 140 P.3d 256 (Colo. App. 2006).

39-21-117. Saving clause. The provisions of section 13-52-108, C.R.S., shall not apply to methods of enforcing collections provided in this article.

Source: L. 65: p. 1150, § 4. C.R.S. 1963: § 138-9-16.

39-21-118. Criminal penalties. (1) Any person who willfully attempts in any manner to evade or defeat any tax administered by the department or the payment thereof, in addition to other penalties provided by law, is guilty of a class 5 felony and, upon conviction thereof, shall be punished as provided in section 18-1.3-401, C.R.S., or shall be punished by a fine of not more than one hundred thousand dollars, or five hundred thousand dollars in the case of a corporation, or by both such fine and imprisonment, together with the costs of prosecution.

(2) Any person required, or any person who purports to be required, under any title administered by the department to collect, account for, or pay over any tax, who willfully fails to collect or truthfully account for or pay over such tax, including, but not limited to, willfully making a materially false statement in connection with an application for a refund of any tax for the purpose of falsely obtaining a refund of such tax, in addition to other penalties provided by law, is guilty of a class 5 felony and, upon conviction thereof, shall be punished as provided in section 18-1.3-401, C.R.S., or shall be punished by a fine of not more than one hundred thousand dollars, or five hundred thousand dollars in the case of a corporation, or by both such fine and imprisonment, together with the costs of prosecution.

(2.5) Any person who through gross negligence or recklessness makes a materially false statement in applying for a refund pursuant to section 39-26-703 or any other person who makes a false statement in connection with an application for a refund is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than five hundred dollars, or by imprisonment in the county jail for not more than ninety days, or by both such fine and imprisonment.

(3) Any person required under any title administered by the department to pay any tax or estimated tax, or required under such title or by regulations made under authority thereof to make a return, keep any records, or supply any information, who willfully fails to pay such tax or estimated tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, in addition to other penalties provided by law, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than fifty thousand dollars, or one hundred thousand dollars in the case of a corporation, or imprisoned not more than one year, or both, together with the costs of prosecution.

(4) Any person who willfully makes and subscribes any return, statement, or other document, which contains or is verified by a written declaration that it is made under the penalties of perjury, and which he or she does not believe to be true and correct as to every material matter, is guilty of a class 5 felony and, upon conviction thereof, shall be punished as provided in section 18-1.3-401, C.R.S., or shall be punished by a fine of not more than

one hundred thousand dollars, or five hundred thousand dollars in the case of a corporation, or by both such fine and imprisonment, together with the costs of prosecution.

(5) Any person who willfully aids or assists in, or procures, counsels, or advises the preparation or presentation under, or in connection with any matter arising under any title administered by the department, or a return, affidavit, claim, or other document, which is fraudulent or is false as to any material matter, whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document, is guilty of a class 5 felony and, upon conviction thereof, shall be punished as provided in section 18-1.3-401, C.R.S., or shall be punished by a fine of not more than one hundred thousand dollars, or five hundred thousand dollars in the case of a corporation, or by both such fine and imprisonment, together with the costs of prosecution.

Source: **L. 77:** Entire section added, p. 1773, § 2, effective July 1. **L. 85:** Entire section R&RE, p. 1253, § 4, effective January 1, 1986. **L. 89:** (1), (2), (4), and (5) amended, p. 852, § 144, effective July 1. **L. 2002:** (1), (2), (4), and (5) amended, p. 1556, § 348, effective October 1. **L. 2011:** (2) amended and (2.5) added, (HB 11-1265), ch. 228, p. 977, § 2, effective May 27.

Editor's note: Section 5 of chapter 228, Session Laws of Colorado 2011, provides that the act amending subsection (2) and adding subsection (2.5) applies to all claims for refunds of sales or use tax filed with the department of revenue before, on, or after May 27, 2011.

Cross references: (1) For civil penalties, see §§ 39-22-621, 39-23.5-110, 39-26-115, 39-26-118, 39-26-204, 39-27-105, 39-28-108, and 39-29-115.

(2) For the legislative declaration contained in the 2002 act amending subsections (1), (2), (4), and (5), see section 1 of chapter 318, Session Laws of Colorado 2002.

(3) For the legislative declaration in the 2011 act amending subsection (2) and adding subsection (2.5), see section 1 of chapter 228, Session Laws of Colorado 2011.

ANNOTATION

A person who willfully fails to pay sales taxes due the state at the time required may be charged under subsection (2) and prosecuted for commission of a felony. *People v. Rea*, 7 P.3d 995 (Colo. App. 1999).

Subsection (2) applies to persons required to collect, account for, or pay over any tax;

whereas subsection (3) applies to any person required to pay any tax. Subsections (2) and (3) cover different behavior, and a person charged with violating subsection (2), which is a felony, need not be also charged with violating subsection (3), which is a misdemeanor. *People v. Rea*, 7 P.3d 995 (Colo. App. 1999).

39-21-119. Filing with executive director - when deemed to have been made.

(1) (a) Any report, claim, tax return, statement, or other document required or authorized under articles 22, 26, 28, and 29 of this title and article 3 of title 42, C.R.S., to be filed with or any payment made to the executive director that is transmitted through the United States mail shall be deemed filed with and received by the executive director on the date shown by the cancellation mark stamped on the envelope or other wrapper containing the document required to be filed.

(b) Any such document which is mailed, but not received by the executive director, or is received and the cancellation mark is not legible, or is erroneous or omitted shall be deemed to have been filed and received on the date it was mailed if the sender establishes by competent evidence that the document was deposited in the United States mails on or before the date due for filing. In such cases of nonreceipt of a document by the executive director, the sender shall file a duplicate copy thereof within thirty days after written notification is given to the sender by the executive director of the failure to receive such document.

(2) If any report, claim, tax return, statement, remittance, or other document is sent by United States registered mail, certified mail, or certificate of mailing, a record authenticated by the United States postal service of such registration, certification, or certificate shall be considered competent evidence that the report, claim, tax return, statement, remittance, or

other document was mailed to the executive director, to the state officer or state agency to which it was addressed, and the date of the registration, certification, or certificate shall be deemed to be the postmark date.

(3) If the date for filing any report, claim, tax return, statement, remittance, or other document falls upon a Saturday, Sunday, or legal holiday, it shall be deemed to have been timely filed if filed on the next business day.

(4) The date of receipt of returns or other documents made, filed, signed, subscribed, verified, transmitted, received, or stored under the alternative methods provided in section 39-21-120 shall be determined pursuant to rules and regulations adopted by the executive director pursuant to section 39-21-112 (1).

Source: **L. 77:** Entire section added, p. 1404, § 3, effective July 1. **L. 82:** (1)(a) amended, p. 559, § 3, effective April 6. **L. 93:** (4) added, p. 429, § 2, effective April 19. **L. 2001:** (1)(a) amended, p. 780, § 15, effective June 1. **L. 2009:** (1)(a) amended, (HB 09-1053), ch. 159, p. 693, § 18, effective August 5.

39-21-120. Signature and filing alternatives for tax returns. (1) For the purposes of any returns or other documents made, filed, signed, subscribed, verified, transmitted, received, or stored pursuant to articles 22 to 31 of this title, articles 46 and 47 of title 12, article 60 of title 34, and article 3 of title 42, C.R.S., the executive director may prescribe voluntary alternative methods for the making, filing, signing, subscribing, verifying, transmitting, receiving, or storing of returns or other documents pursuant to the statutory provisions of this article and other articles referenced in this article. The executive director shall adopt rules as may be appropriate to define and implement acceptable alternatives for each article within the scope of this section.

(2) Any return or other document signed, subscribed, or verified under any method adopted under subsection (1) of this section shall be treated for all purposes, including penalties for perjury, in the same manner as if verified by signature.

(3) To enable alternative filing of tax returns, the executive director is hereby authorized to contract for communications services with governmental or private contractors. Such contractors shall be subject to the provisions of section 39-21-113 (4), and each contract entered into pursuant to this subsection (3) shall set forth the provisions of section 39-21-113 (4) and (6).

Source: **L. 93:** Entire section added, p. 428, § 1, effective April 19. **L. 2001:** (1) amended, p. 781, § 16, effective June 1. **L. 2009:** (1) amended, (HB 09-1053), ch. 159, p. 693, § 19, effective August 5.

39-21-121. Unclaimed property offset. (1) (a) The department shall periodically certify to the state treasurer, acting as the administrator of unclaimed property under the "Unclaimed Property Act", article 13 of title 38, C.R.S., information regarding persons who are liable for the payment of taxes, penalties, or interest imposed pursuant to articles 22 to 33 of this title that are delinquent and in distraint.

(b) The information described in paragraph (a) of this subsection (1) shall include the social security number or federal employer identification number, whichever is applicable, of the person owing the delinquent taxes, penalties, or interest, the amount owed, and any other identifying information required by the state treasurer.

(2) (a) Prior to the payment of a claim for unclaimed property pursuant to section 38-13-117, C.R.S., the state treasurer shall compare the social security number or federal employer identification number, whichever is applicable, of the claimant with those certified by the department pursuant to subsection (1) of this section. If the name and associated social security number or federal employer identification number of a claimant appears among those certified, the state treasurer shall obtain the current address of the claimant, suspend the payment of the claim, and notify the department. The notification shall include the name, home address, and social security number or federal employer identification number of the claimant.

(b) After receipt of the notification from the state treasurer that a person claiming unclaimed property pursuant to section 38-13-117, C.R.S., appears among those certified by the department pursuant to subsection (1) of this section, the department shall notify the person, in writing, that the state intends to offset the person's delinquent state taxes, penalties, or interest liability against the person's claim for unclaimed property.

(3) Except as otherwise provided in section 38-13-117.3 (2), C.R.S., upon notification by the state treasurer of the amounts of unclaimed property held pursuant to section 38-13-117.7, C.R.S., the department shall apply such amounts to the person's delinquent state tax liability.

(4) The department shall promulgate rules pursuant to article 4 of title 24, C.R.S., establishing procedures to implement this section.

(5) For purposes of this section, "claim for unclaimed property" means a cash claim submitted in accordance with section 38-13-117, C.R.S.

Source: L. 2005: Entire section added, p. 701, § 6, effective August 8.

39-21-122. Revenue impact of 2010 tax legislation - tracking by department.

(1) The department of revenue shall account for all revenue attributable to the enactment of House Bill 10-1189, enacted in 2010, and shall, to the extent such information is available, make quarterly reports to the general assembly regarding the quarterly and cumulative net revenue gain to the state resulting from the enactment of said bill.

(2) The department of revenue shall account for all revenue attributable to the enactment of House Bill 10-1190, enacted in 2010, and shall, to the extent such information is available, make quarterly reports to the general assembly regarding the quarterly and cumulative net revenue gain to the state resulting from the enactment of said bill.

(3) The department of revenue shall account for all revenue attributable to the enactment of House Bill 10-1191, enacted in 2010, and shall, to the extent such information is available, make quarterly reports to the general assembly regarding the quarterly and cumulative net revenue gain to the state resulting from the enactment of said bill.

(4) Repealed.

(5) The department of revenue shall account for all revenue attributable to the enactment of House Bill 10-1193, enacted in 2010, and shall, to the extent such information is available, make quarterly reports to the general assembly regarding the quarterly and cumulative net revenue gain to the state resulting from the enactment of said bill.

(6) The department of revenue shall account for all revenue attributable to the enactment of House Bill 10-1194, enacted in 2010, and shall, to the extent such information is available, make quarterly reports to the general assembly regarding the quarterly and cumulative net revenue gain to the state resulting from the enactment of said bill.

(7) Repealed.

(8) The department of revenue shall account for all revenue attributable to the enactment of House Bill 10-1196, enacted in 2010, and shall, to the extent such information is available, make quarterly reports to the general assembly regarding the quarterly and cumulative net revenue gain to the state resulting from the enactment of said bill.

(9) The department of revenue shall account for all revenue attributable to the enactment of House Bill 10-1199, enacted in 2010, and shall, to the extent such information is available, make quarterly reports to the general assembly regarding the quarterly and cumulative net revenue gain to the state resulting from the enactment of said bill.

(10) The department of revenue shall account for all revenue attributable to the enactment of House Bill 10-1197, enacted in 2010, and shall, to the extent such information is available, make quarterly reports to the general assembly regarding the quarterly and cumulative net revenue gain to the state resulting from the enactment of said bill.

Source: L. 2010: Entire section added, (HB 10-1189), ch. 5, p. 38, § 2, effective February 24; entire section added, (HB 10-1190), ch. 6, p. 42, § 3, effective February 24; entire section added, (HB 10-1191), ch. 7, p. 47, § 4, effective February 24; entire section added, (HB 10-1193), ch. 9, p. 56, § 3, effective February 24; entire section added, (HB

10-1194), ch. 10, p. 59, § 2, effective February 24; entire section added, (HB 10-1195), ch. 11, p. 63, § 2, effective February 24; entire section added, (HB 10-1196), ch. 12, p. 66, § 3, effective February 24; entire section added, (HB 10-1199), ch. 13, p. 67, § 1, effective February 24; entire section added, (HB 10-1192), ch. 8, p. 52, § 5, effective March 1; entire section added, (HB 10-1197), ch. 175, p. 635, § 3, effective August 11. **L. 2011:** (7) repealed, (HB 11-1005), ch. 194, p. 755, § 2, effective July 1; (4)(b) added by revision, (HB 11-1293), ch. 299, pp. 1437, 1440, §§ 3, 6.

Editor's note: (1) The provisions of this section, as added by House Bill 10-1189, House Bill 10-1190, House Bill 10-1191, House Bill 10-1192, House Bill 10-1193, House Bill 10-1194, House Bill 10-1195, House Bill 10-1196, House Bill 10-1197, and House Bill 10-1199, were harmonized.

(2) Subsection (4)(b) provided for the repeal of subsection (4), effective July 1, 2012. (See L. 2011, pp. 1437, 1440.)

PART 2

TAX AMNESTY PROGRAM

Editor's note: This part 2 was repealed in 1987 and was subsequently recreated and reenacted in 2003, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this part 2 prior to 1987, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

39-21-201. Program established. (1) Notwithstanding any other provision of this title, title 29, title 32, or title 42, C.R.S., the executive director shall conduct a tax amnesty program for any taxpayer liable for the payment of any of the taxes specified in subsection (2) of this section for which a return was required to be filed before December 31, 2010, including returns for which the department has granted an extension beyond said date. The taxpayer amnesty program shall be conducted from October 1, 2011, through November 15, 2011, and shall not extend to any other period.

(2) A taxpayer eligible to participate in the tax amnesty program shall include any taxpayer liable for payment of income taxes imposed pursuant to article 22 of this title, sales and use taxes imposed pursuant to article 26 of this title, gasoline and special fuel taxes imposed pursuant to part 1 of article 27 of this title, cigarette taxes imposed pursuant to article 28 of this title, taxes on tobacco products imposed pursuant to article 28.5 of this title, severance taxes imposed pursuant to article 29 of this title, county or municipal sales taxes collected by the executive director pursuant to article 2 of title 29, C.R.S., local marketing and promotion taxes collected by the department pursuant to section 29-25-112, C.R.S., county lodging taxes collected by the department pursuant to section 30-11-107.5, C.R.S., county rental taxes collected by the department pursuant to section 30-11-107.7, C.R.S., local improvement district sales taxes collected by the department pursuant to section 30-20-604.5, C.R.S., regional transportation district sales and use taxes imposed pursuant to article 9 of title 32, C.R.S., Denver metropolitan scientific and cultural facilities district sales and use taxes imposed pursuant to article 13 of title 32, C.R.S., metropolitan football stadium district sales and use taxes imposed pursuant to article 15 of title 32, C.R.S., and regional transportation authority sales and use taxes collected by the department pursuant to section 43-4-605 (1) (j), C.R.S.

(3) (a) Subject to the provisions of subsection (4) of this section, the tax amnesty program shall permit any taxpayer liable for payment of any taxes specified in subsection (2) of this section to report the amount of the taxes for which the taxpayer is liable and to pay the full amount of such taxes, including one-half of any interest due, as computed without the reduction pursuant to section 39-21-109 (1.5), on or before November 15, 2011, without the imposition of any fine or other civil or criminal penalty otherwise provided by law.

(b) Subject to the provisions of subsection (4) of this section, the tax amnesty program shall permit any taxpayer liable for payment of any taxes specified in subsection (2) of this section to report the amount of the taxes for which the taxpayer is liable and to sign an

agreement to pay that shall be printed on the tax amnesty application form and deliver the application and signed agreement to pay to the department on or before November 15, 2011, without the imposition of any fine or other civil or criminal penalty otherwise provided by law. If the taxpayer fails to pay the full amount of taxes owed and all interest for which the taxpayer is liable pursuant to the terms of the tax amnesty agreement to pay, the waiver provision of this paragraph (b) is void.

(c) Payment of taxes pursuant to this article shall constitute a waiver of any right to file a claim for refund or an amended return for refund, or seek an administrative review, administrative hearing, or district court appeal pursuant to sections 39-21-103, 39-21-104, and 39-21-105.

(d) If a taxpayer fails to pay the full amount of the tax liability by November 15, 2011, or fails to sign and file the agreement to pay on the tax amnesty application by November 15, 2011, and remain in compliance with the agreement to pay, or commits willful fraud in filing pursuant to the terms of the tax amnesty program, the taxpayer shall be subject to civil or criminal penalty, or both.

(4) (a) A taxpayer liable for the payment of any taxes specified in subsection (2) of this section shall not be permitted to satisfy such liability through the tax amnesty program if a notice of deficiency for the liability has been mailed to the taxpayer before October 1, 2011.

(b) A taxpayer who is under investigation or being prosecuted for criminal or fraudulent activity as of October 1, 2011, for crimes related to any taxes collected by the department is not eligible to participate in the tax amnesty program, regardless of whether the taxes owed for which the taxpayer seeks amnesty are the taxes on which the investigation or prosecution is based.

(5) Notwithstanding the provisions of section 24-19.5-103, C.R.S., the department is authorized, at the discretion of the executive director, to accept department approved credit card payment for all payments due pursuant to this article and assess the taxpayer an amount equivalent to any service fee charged by the credit card company to the department. Such amount shall be collected by the department and used by the department for the purpose of paying such credit card fees.

(6) The executive director shall promulgate emergency rules necessary for the administration of this article in accordance with article 4 of title 24, C.R.S.

(6.5) The department may contract with one or more independent contractors to administer any part of the tax amnesty program on behalf of the department.

(7) The department shall conduct an advertising and publicity campaign concerning the tax amnesty program that shall include sufficient notice to potential participants that all information obtained pursuant to this article may be disclosed to the federal internal revenue service.

(8) The requirements of the Colorado "Procurement Code", articles 101 to 112 of title 24, C.R.S., shall not apply to services and products procured by the department pursuant to this section. The department shall award contracts for services and products in good faith and in a manner that encourages, to the extent practicable, competitive proposals. Offerors and potential offerors shall not have a right to protest, recover bid preparation costs, or pursue any other remedy provided by Colorado law for services and products procured by the department for purposes of this article.

Source: L. 2003: Entire part RC&RE, p. 504, § 1, effective March 5. L. 2005: (2) amended, p. 1069, § 16, effective January 1, 2006. L. 2011: (1), (2), (3)(a), (3)(b), (3)(d), (4), and (8) amended and (6.5) added, (SB 11-184), ch. 290, p. 1345, § 1, effective June 3.

Editor's note: Article 25 of this title, referenced in subsection (2), was repealed, effective May 22, 2003, but has been left in for historical purposes.

Cross references: For the legislative declaration contained in the 2005 act amending subsection (2), see section 1 of chapter 269, Session Laws of Colorado 2005.

39-21-202. Tax amnesty cash fund - creation - uses - repeal. (1) There is hereby created in the state treasury the tax amnesty cash fund, referred to in this section as the

“fund”. Notwithstanding any provision of law to the contrary, any payment received by the department prior to January 1, 2012, for income tax or sales and use tax from a taxpayer that is made in accordance with section 39-21-201 that would otherwise be required to be deposited in the general fund shall instead be deposited in the fund.

(2) (a) The moneys in the fund shall be subject to appropriation by the general assembly to the department for the direct and indirect costs associated with the administration of this part 2 and for the preparation of the first two tax profile and expenditure reports required pursuant to part 3 of this article. Any moneys in the fund not expended for such purposes may be invested by the state treasurer as provided by law. All interest and income derived from the investment and deposit of moneys in the fund shall be credited to the fund. Any unexpended and unencumbered moneys remaining in the fund at the end of any fiscal year shall remain in the fund and shall not be transferred to the general fund or any other fund.

(b) The state treasurer shall transfer the balance of the fund as of December 31, 2011, minus one million dollars, as follows:

(I) One hundred seventy-five thousand dollars shall be transferred to the general fund. If such transfer occurs, it is the intent of the general assembly that such amount be included in a supplemental appropriation to the department of health care policy and financing for the fiscal year commencing on July 1, 2011, for allocation to the commission on family medicine residency training programs.

(II) Any moneys remaining after the transfer set forth in subparagraph (I) of this paragraph (b) shall be transferred to the state education fund created in section 17 (4) of article IX of the state constitution.

(c) On June 30, 2012, the state treasurer shall transfer an amount equal to the moneys expended from the general fund by the department for the administration of section 39-21-201 to the general fund.

(d) Notwithstanding any provision of paragraph (a) of this subsection (2) to the contrary, the state treasurer shall transfer the unexpended and unencumbered moneys in the fund as of June 30, 2015, to the general fund.

(3) This section is repealed, effective January 1, 2016.

Source: L. 2011: Entire section added, (SB 11-184), ch. 290, p. 1347, § 2, effective June 3.

PART 3

TAX PROFILE AND EXPENDITURE REPORT

39-21-301. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) The general assembly uses both direct expenditure of government funds and special or selective tax relief, which is known as a tax expenditure, to further various public policy goals;

(b) A tax expenditure differs from a direct spending program because a direct spending program continues only if funds are appropriated for each budget period, while the continuation of a tax expenditure generally does not require any legislative action;

(c) In addition, a direct spending program is generally detailed on the expenditure side of the budget, but a tax expenditure is simply included on the revenue side of the budget without itemization;

(d) A tax expenditure should receive a periodic and comprehensive review as to its total cost and effectiveness in achieving its objectives;

(e) It is important that state government be accountable and transparent in such a way that the general public can understand the value of tax expenditures given by the state; and

(f) In the past, the department of revenue has published a Colorado tax profile study, which included a substantial amount of useful information about state and local taxes.

(2) In enacting this part 3, it is the intent of the general assembly to create a means for providing the general assembly and the public with this vital tax-related information in a biennial tax profile and tax expenditure report.

Source: L. 2011: Entire part added, (SB 11-184), ch. 290, p. 1348, § 3, effective June 3.

39-21-302. Definitions. As used in this part 3, unless the context otherwise requires:

(1) "Colorado tax profile study 2001" means the "Colorado Tax Profile Study 2001 and Statistics of Income" prepared in May 2004 by the office of research and analysis in the department for the individual income tax returns tax year 2000 and the corporate income tax returns filed in fiscal year 2002.

(2) "Tax expenditure" means a tax provision that provides a gross or taxable income definition, deduction, exemption, credit, or rate for certain persons, types of income, transactions, or property that results in reduced tax revenue.

(3) "Tax profile and expenditure report" or "report" means the biennial report that the department is required to prepare pursuant to section 39-21-303 (1).

Source: L. 2011: Entire part added, (SB 11-184), ch. 290, p. 1348, § 3, effective June 3.

39-21-303. Tax profile and expenditure report. (1) On or before January 1, 2013, and January 1 of every odd-numbered year thereafter, the department shall prepare a tax profile and expenditure report for the state that includes the information set forth in subsection (2) of this section.

(2) (a) A tax profile and expenditure report must include the following information for each tax expenditure for any tax levied and collected by the state that is administered by the department:

(I) A citation of the statutory or other legal authority for the tax expenditure;

(II) The year that the tax expenditure was enacted;

(III) A description of the tax expenditure;

(IV) An estimate of the tax expenditure's effect on revenue for the most recently completed tax or calendar year, as appropriate, for which such information is available;

(V) The estimate required pursuant to subparagraph (IV) of this paragraph (a) for the tax expenditure that was included in each of the three prior tax profile and expenditure reports, if available; and

(VI) For a tax expenditure that is subject to the requirement set forth in section 39-21-304, a statement of the intended purpose of the tax expenditure.

(b) For the state income tax only, the tax profile and expenditure report must include the effect of the tax expenditure by income class. The provisions of this paragraph (b) shall only apply to the extent that the department is capable of accessing the necessary information from its data system.

(c) The tax profile and expenditure report must include the sum of all estimates required pursuant to subparagraphs (IV) and (V) of paragraph (a) of this subsection (2) for each tax.

(d) (I) To the extent not otherwise included in the tax profile and expenditure report pursuant to this subsection (2), the report must also include any information that was included in the Colorado tax profile study 2001 for any taxes covered by such study, which includes but is not limited to information related to:

(A) State and local tax collections;

(B) Revenues, taxes, incidence, and equity;

(C) The distribution of state and local taxes among households; and

(D) Colorado statistics of income.

(II) The information required pursuant to subparagraph (I) of this paragraph (d) shall be for the most recent tax year for which such information is available.

(3) (a) The department shall provide a copy of the report to all members of the general assembly in accordance with section 24-1-136 (9), C.R.S.

(b) No later than February 1, 2013, and February 1 of every odd-numbered year thereafter, the executive director, or his or her designee, shall present the tax profile and expenditure report to the finance committees of the house of representatives and the senate, or any successor committees.

(c) The department shall make the tax profile and expenditure report available for public inspection and shall publish the report on the department web site.

(4) The reporting requirement set forth in this section is exempt from the provisions of section 24-1-136 (11), C.R.S., and the biennial reporting requirement shall remain in effect until changed by the general assembly acting by bill.

(5) To the extent that the tax profile and expenditure report must include the distribution of tax burden by income class pursuant to paragraphs (b) and (d) of subsection (2) of this section, the department shall use at least as many income classes as the Colorado statistics of income in the Colorado tax profile study 2001, and the highest income class shall be at least as high as in such Colorado statistics of income.

(6) (a) Notwithstanding any provision of this section to the contrary, beginning with the report required to be prepared on or before January 1, 2017, and every odd-numbered year thereafter, the department may elect not to prepare a report if:

(I) The department does not receive an appropriation for the direct and indirect costs associated with the preparation of the report; and

(II) On or before April 1 of the year prior to the deadline for the report, the department notifies the finance committees of the house of representatives and the senate, or any successor committees, that the department is not going to prepare the report.

(b) If the department does not prepare a report pursuant to paragraph (a) of this subsection (6) for a given year, the requirements set forth in subsection (3) of this section related to the report shall not apply.

Source: L. 2011: Entire part added, (SB 11-184), ch. 290, p. 1349, § 3, effective June 3.

39-21-304. Tax expenditure - statement of intended purpose. On and after January 1, 2012, any bill that creates a new tax expenditure or extends an expiring tax expenditure shall include a legislative declaration stating the intended purpose of the tax expenditure.

Source: L. 2011: Entire part added, (SB 11-184), ch. 290, p. 1351, § 3, effective June 3.

Income Tax

ARTICLE 22

Income Tax

Editor's note: This article was numbered as article 1 of chapter 138, C.R.S. 1963. The provisions of this article were repealed and reenacted in 1964, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1964, consult the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

Cross references: For the constitutional provision that establishes limitations on spending, the imposition of taxes, and the incurring of debt, see § 20 of article X of the state constitution; for the use of a method in lieu of any required oath or affirmation by a person making any return or any application for refund or protest pursuant to this article, see § 24-12-108.

Law reviews: For article, "Survey of Colorado Tax Liens", see 14 Colo. Law. 1765 (1985).

PART 1

GENERAL

- 39-22-101. Short title.
- 39-22-102. Legislative declaration.
- 39-22-103. Definitions - construction of terms.
- 39-22-104. Income tax imposed on individuals, estates, and trusts - single rate - definitions - repeal.
- 39-22-104.5. Pretax payments - catastrophic health insurance.
- 39-22-104.6. Pretax payments - medical savings accounts.
- 39-22-105. Alternative minimum tax.
- 39-22-106. Colorado personal exemptions of a resident individual.
- 39-22-107. Income tax filing status.
- 39-22-107.5. Income tax filing status - innocent spouse relief.
- 39-22-108. Credit for tax paid other states.
- 39-22-108.5. Dual resident trusts - income tax calculation.
- 39-22-109. Income of a nonresident individual for purposes of Colorado income tax.
- 39-22-110. Apportionment of tax in the case of a part-year resident.
- 39-22-111. Accounting periods and methods.
- 39-22-112. Persons and organizations exempt from tax under this article.
- 39-22-113. Tax credit or refund for persons with disabilities who are employed - amount - applicability. (Repealed)
- 39-22-114. Residential energy credit. (Repealed)
- 39-22-114.5. Tax credit for investment in technologies for recycling plastics.
- 39-22-115. Credit for crops or livestock contributed to charitable organizations - definitions. (Repealed)
- 39-22-116. Tax tables for individuals.
- 39-22-117. Uninsurable health plan charge - repeal. (Repealed)
- 39-22-118. Grants for members of United States armed services - combat pay received during active duty in Operation Desert Storm - amount - applicability - repeal. (Repealed)
- 39-22-119. Expenses related to child care - credits against state tax.
- 39-22-120. Legislative declaration - state sales tax refund - offset against state income tax.

- 39-22-120.5. Unrefunded excess revenues. (Repealed)
- 39-22-121. Credit for child care facilities - repeal.
- 39-22-122. Long-term care insurance credit.
- 39-22-123. Earned income tax credit - refund of state excess revenues for fiscal years commencing on or after July 1, 1998.
- 39-22-124. Tax credit against state taxes - legislative declaration - hearings and appeals. (Repealed)
- 39-22-125. Credit for health benefit plans - definitions - mechanism to refund excess state revenues. (Repealed)
- 39-22-126. Credit for health care professionals practicing in rural health care professional shortage areas - legislative declaration - definitions. (Repealed)
- 39-22-127. Credit for providing foster care - refund of excess state revenues for fiscal years commencing on or after January 1, 2000 - legislative declaration. (Repealed)
- 39-22-128. Credit for income eligible to be deferred on sale of livestock due to weather-related conditions - repeal. (Repealed)

PART 2

PARTNERS AND PARTNERSHIPS

- 39-22-201. Partners, not partnership, subject to tax.
- 39-22-201.5. Limited liability company members - subject to tax. (Repealed)
- 39-22-202. Resident partners.
- 39-22-202.5. Resident members. (Repealed)
- 39-22-203. Nonresident partners.
- 39-22-203.5. Nonresident members. (Repealed)
- 39-22-204. Accounting periods and methods.
- 39-22-204.5. Accounting periods and methods - limited liability companies. (Repealed)
- 39-22-205. Limited liability company members. (Repealed)
- 39-22-206. Foreign source income of export taxpayers.

PART 3

CORPORATIONS

39-22-402.

SUBPART 1

C CORPORATIONS

39-22-403.

39-22-404.

39-22-405.

39-22-406.

39-22-407.

- 39-22-300.1. Short title - citation.
- 39-22-301. Corporate tax imposed.
- 39-22-302. S corporations.
- 39-22-303. Dividends in a combined report - foreign source income - affiliated groups - definitions.
- 39-22-303.1. Interstate banking or branching - nondiscriminatory tax treatment.
- 39-22-303.5. Single-factor apportionment of business income - allocation of nonbusiness income - rules - definitions.
- 39-22-303.7. Sourcing of sales of mutual fund service corporations - definitions.
- 39-22-304. Net income of corporation.
- 39-22-305. Consolidated returns.
- 39-22-306. Accounting periods and methods.
- 39-22-307. Credit allowed for prior payment of impact assistance.
- 39-22-308. Credit allowed for purchase of Colorado coal.
- 39-22-309. Tax credit for investment in technologies for recycling plastics. (Repealed)
- 39-22-310. Legislative declaration - statutory interpretation and construction.

SUBPART 2

S CORPORATIONS

39-22-501.

39-22-502.

39-22-503.

39-22-504.

39-22-504.5.

39-22-504.6.

39-22-504.7.

39-22-505.

39-22-506.

39-22-507.

39-22-507.5.

39-22-507.6.

39-22-508.

39-22-508.1.

39-22-508.2.

39-22-508.3.

39-22-508.4.

- 39-22-320. Short title - citation.
- 39-22-321. Definitions.
- 39-22-322. Taxation of an S corporation and its shareholders.
- 39-22-323. Modification and characterization of income.
- 39-22-324. Basis and adjustments.
- 39-22-325. Carryforwards and carrybacks - loss limitation.
- 39-22-326. Part-year residence.
- 39-22-327. Distributions.
- 39-22-328. Returns.
- 39-22-329. Tax credits.
- 39-22-330. Uniformity of application and construction.

PART 4

ESTATES AND TRUSTS

- 39-22-401. Income of a resident estate or

- trust for purposes of Colorado income tax.
- Share of a resident estate, trust, or beneficiary in Colorado fiduciary adjustments.
- Income of a nonresident estate or trust subject to income tax.
- Share of a nonresident estate, trust, or beneficiary in income from sources within Colorado.
- Colorado exemption and federal income tax modification of nonresident estate or trust. (Repealed)
- Special rule for accumulation distributions. (Repealed)
- Accounting periods and methods.

PART 5

SPECIAL RULES

- Taxation of regulated investment companies.
- Adjustment to basis of shares of regulated investment company. (Repealed)
- Taxation of real estate investment trusts - definitions.
- Net operating losses.
- Short title.
- Definitions.
- Medical savings accounts - establishment - contributions - distributions - restrictions - taxation - portability.
- Oil and gas producers. (Repealed)
- Tentative carry-back adjustment - application - allowance. (Repealed)
- Credits against tax - employer expenses - work incentive programs. (Repealed)
- Credits against tax - investment in certain property.
- Credits against corporate tax - investment in certain property.
- Credit for property taxes attributable to pollution control property. (Repealed)
- Short title. (Repealed)
- Definitions - construction of terms. (Repealed)
- Special credit available - new business facility - new employees. (Repealed)
- Election to defer commencement of credit. (Repealed)

39-22-508.5.	Effect of transfers of new business facilities. (Repealed)	39-22-525.	Contributions to Colorado institute of technology - credit against tax. (Repealed)
39-22-508.6.	Effect of termination of enterprise or facility. (Repealed)	39-22-526.	Credit for redevelopment of contaminated land - repeal.
39-22-508.7.	Effective date - termination date. (Repealed)	39-22-527.	Agricultural value-added tax credit. (Repealed)
39-22-509.	Mass transit and ridesharing arrangements - employer deductions.	39-22-528.	Tax credit for participation in agriculture value-added cash fund. (Repealed)
39-22-510.	State-employed chaplains - designation of rental allowance.	39-22-529.	Business expense deduction - labor services - unauthorized alien - definitions.
39-22-511.	Credit against Colorado income taxes based on cost of certificate purchased by persons in the business of the transportation of ashes, trash, or other discarded materials. (Repealed)	39-22-530.	Credit for employers that hire persons with developmental disabilities - definitions.
39-22-512.	Commercial, industrial, and agricultural energy credit. (Repealed)	39-22-531.	Colorado job growth incentive tax credit - rules - definitions - repeal.
39-22-513.	Credit to lending institutions for making residential energy-related loans. (Repealed)	39-22-532.	Colorado innovation investment tax credit - definitions.
39-22-514.	Tax credit for qualified costs incurred in preservation of historic properties.	39-22-533.	Instream flow incentive tax credit for water rights holders - rules - definitions - repeal.
39-22-515.	Tax credit for qualified equipment utilizing postconsumer waste. (Repealed)	39-22-534.	Credit for estate taxes paid - agricultural land - recapture - definitions.
39-22-516.	Tax credit for purchase of vehicles using alternative fuels - repeal.	<p style="text-align: center;">PART 6</p> <p style="text-align: center;">PROCEDURE AND ADMINISTRATION</p> <p style="text-align: center;">SUBPART 1</p> <p style="text-align: center;">GENERAL PROVISIONS</p>	
39-22-516.5.	Tax credit for innovative motor vehicles - repeal.		
39-22-517.	Tax credit for child care center investments.		
39-22-518.	Tax modification for net capital gains - repeal.	39-22-601.	Returns.
39-22-519.	Tax credit for book value of certificate for carriers of sludge - repeal. (Repealed)	39-22-602.	Failure to make return - director may make.
39-22-520.	Credit against tax - investment in school-to-career program.	39-22-603.	Returns not made under oath.
39-22-521.	Credits against tax - employer expenses - public assistance recipients.	39-22-603.5.	Frivolous returns.
39-22-522.	Credit against tax - conservation easements.	39-22-604.	Withholding tax - requirement to withhold - tax lien - exemption from lien - definitions.
39-22-522.5.	Conservation easement tax credits - dispute resolution - legislative declaration.	39-22-604.3	Innovation reinvestment - withholding - transfers - bioscience - clean technology - short title - legislative declaration - definitions - repeal.
39-22-523.	Credit against tax - contributions to high technology scholarship program - mechanism to refund excess state revenues. (Repealed)	39-22-604.5.	Withholding tax - transfers of Colorado real property - non-resident transferors.
39-22-524.	Tax credit for individuals contributing matching funds for individual development accounts - repeal. (Repealed)	39-22-605.	Failure by individual to pay estimated income tax.
		39-22-606.	Failure by corporation to pay estimated income tax.
		39-22-607.	Estimated tax deposited with treasurer.
		39-22-608.	Form, place, and date of filing return - extension - electronic filing.

- 39-22-609. Payment of tax - applicable when.
- 39-22-610. Relief for members of the armed forces of the United States - when.
- 39-22-611. Property exempt from ad valorem taxes.
- 39-22-612. Certificate of nonresidence. (Repealed)
- 39-22-613. Oath and affidavit. (Repealed)
- 39-22-614. Contents of application. (Repealed)
- 39-22-615. Duration and renewal of certificate. (Repealed)
- 39-22-616. Fees. (Repealed)
- 39-22-617. Exemption of holder of certificate. (Repealed)
- 39-22-618. False statements deemed perjury. (Repealed)
- 39-22-619. Certificate improperly procured. (Repealed)
- 39-22-620. Review of action of executive director. (Repealed)
- 39-22-621. Interest and penalties.
- 39-22-622. Refunds.
- 39-22-623. Disposition of collections.
- 39-22-624. Prior rights and liabilities not affected.
- 39-22-625. Application of article - effective date.
- 39-22-626. Applicability of amendments to this article to income tax years.
- 39-22-627. Temporary adjustment of rate of income tax - refund of excess state revenues - authority of executive director.

SUBPART 2

REPORTABLE TRANSACTIONS

- 39-22-651. Short title - citation.
- 39-22-652. Definitions.
- 39-22-653. Taxpayer disclosure of reportable or listed transactions.
- 39-22-654. Additional listed transactions - report.
- 39-22-655. Penalty for failure to disclose a reportable or listed transaction.
- 39-22-656. Material advisor - disclosure of reportable or listed transactions.
- 39-22-657. Material advisor - maintenance of list.
- 39-22-658. Material advisor - penalties.
- 39-22-659. Waiver, reduction, or compromise of penalty for reasonable cause.

PART 7

NONGAME WILDLIFE
VOLUNTARY CONTRIBUTION

- 39-22-701. Legislative declaration.
- 39-22-702. Voluntary contribution designation - procedure.
- 39-22-703. Contributions credited to nongame and endangered wildlife cash fund - creation - appropriation.
- 39-22-704. Repeal of part.

PART 8

DOMESTIC ABUSE
PROGRAM VOLUNTARY CONTRIBUTION

- 39-22-801. Voluntary contribution designation - procedure.
- 39-22-802. Contributions credited to Colorado domestic abuse program fund - creation - appropriation.
- 39-22-803. Repeal of part.

PART 9

UNITED STATES OLYMPIC
COMMITTEE VOLUNTARY
CONTRIBUTION

- 39-22-901 to
39-22-903. (Repealed)

PART 10

LIMITATION ON VOLUNTARY
CONTRIBUTION PROGRAMS

- 39-22-1001. Limitation on the duration of voluntary contribution programs - queue - notice.

PART 11

COLORADO VETERANS'
MEMORIAL FUND
VOLUNTARY CONTRIBUTION

- 39-22-1101. Voluntary contribution designation - procedure - repeal. (Repealed)
- 39-22-1102. Fund established - contributions - appropriations - repeal. (Repealed)

PART 12

SPECIAL RESERVE FUND FOR
PAYMENT OF CERTAIN REFUNDS

- 39-22-1201. Fund established - revenue -

appropriation - discontinuance of fund - repeal. (Repealed)

PART 13

HOMELESS PREVENTION ACTIVITIES PROGRAM FUND - VOLUNTARY CONTRIBUTION

- 39-22-1301. Voluntary contribution designation - procedure.
39-22-1302. Contributions credited to homeless prevention activities program fund - creation - appropriation.
39-22-1303. Repeal of part. (Repealed)

PART 14

OPERATION DESERT STORM ACTIVE DUTY MILITARY VOLUNTARY CONTRIBUTION

- 39-22-1401. Voluntary contribution designation - procedure - repeal. (Repealed)
39-22-1402. Contributions credited to Operation Desert Storm active duty military fund - appropriations - repeal. (Repealed)
39-22-1403. Late filing of income tax returns. (Repealed)

PART 15

ACTION OLDER AMERICAN VOLUNTEER PROGRAMS - VOLUNTARY CONTRIBUTION

- 39-22-1501 to
39-22-1504. (Repealed)

PART 16

DRUG ABUSE RESISTANCE EDUCATION (D.A.R.E.) VOLUNTARY CONTRIBUTION

- 39-22-1601 to
39-22-1604. (Repealed)

PART 17

CHILD CARE VOLUNTARY CONTRIBUTION

- 39-22-1701. Legislative declaration.
39-22-1702. Voluntary contribution designation - procedure.
39-22-1703. Contributions credited to Colorado child care improvement fund - creation - appropriation.

- 39-22-1704. Administration of moneys in Colorado child care improvement fund - oversight committee.
39-22-1705. Repeal of part.

PART 18

COLORADO SPECIAL OLYMPICS VOLUNTARY CONTRIBUTION

- 39-22-1801. Legislative declaration.
39-22-1802. Voluntary contribution designation - procedure.
39-22-1803. Contributions credited to the Special Olympics Colorado fund - creation - appropriation.
39-22-1804. Repeal of part.

PART 19

WESTERN SLOPE MILITARY VETERANS' CEMETERY VOLUNTARY CONTRIBUTION

- 39-22-1901. Legislative declaration.
39-22-1902. Voluntary contribution designation - procedure.
39-22-1903. Contributions credited to the fund - creation - appropriation.
39-22-1904. Repeal of part. (Repealed)

PART 20

REFUND OF REVENUES IN EXCESS OF STATE FISCAL YEAR SPENDING LIMITATION

- 39-22-2001. Legislative declaration - revenues exceeding TABOR limit - sales tax refund.
39-22-2002. Fiscal years commencing on or after July 1, 1998 - state sales tax refund - authority of executive director.
39-22-2003. State sales tax refund - offset against state income tax - qualified individuals.

PART 21

COLORADO LOW-INCOME HOUSING TAX CREDIT

- 39-22-2101. Definitions.
39-22-2102. Credit against tax - low-income housing developments.
39-22-2103. Recapture.
39-22-2104. Filing requirements.
39-22-2105. Parallel credits - insurance premium taxes.

- 39-22-2106. Rules.
39-22-2107. Compliance monitoring.

PART 22

PET OVERPOPULATION FUND
VOLUNTARY CONTRIBUTION

- 39-22-2201. Voluntary contribution designa-
tion - procedure.
39-22-2202. Contributions credited to the
fund - administration - trans-
fer.
39-22-2203. Repeal of part.

PART 23

COURT-APPOINTED SPECIAL
ADVOCATES VOLUNTARY
CONTRIBUTION

- 39-22-2301 to
39-22-2304. (Repealed)

PART 24

COLORADO WATERSHED PROTECTION
FUND VOLUNTARY CONTRIBUTION

- 39-22-2401. Legislative declaration.
39-22-2402. Voluntary contribution designa-
tion - procedure.
39-22-2403. Contributions credited to Colo-
rado healthy rivers fund -
creation - appropriation.

PART 25

FAMILY RESOURCE CENTERS FUND
VOLUNTARY CONTRIBUTION

- 39-22-2501. Legislative declaration.
39-22-2502. Voluntary contribution designa-
tion - procedure.
39-22-2503. Contributions credited to the
Family Resource Centers
fund - creation - appropria-
tion.
39-22-2504. Repeal of part.

PART 26

COLORADO STATE FAIR VOLUNTARY
CONTRIBUTION

- 39-22-2601 to
39-22-2604. (Repealed)

PART 27

ORGAN DONOR AWARENESS
VOLUNTARY CONTRIBUTION

- 39-22-2701 to
39-22-2704. (Repealed)

PART 28

DROPOUT PREVENTION ACTIVITY
PROGRAMS VOLUNTARY
CONTRIBUTION

- 39-22-2801 to
39-22-2804. (Repealed)

PART 29

ALZHEIMER'S ASSOCIATION
VOLUNTARY CONTRIBUTION

- 39-22-2901. Voluntary contribution designa-
tion - procedure.
39-22-2902. Contributions credited to the
Alzheimer's Association
fund - creation - appropria-
tion.
39-22-2903. Repeal of part.

PART 30

MILITARY FAMILY RELIEF VOLUNTARY
CONTRIBUTION

- 39-22-3001. Voluntary contribution designa-
tion - procedure.
39-22-3002. Contributions credited to the
military family relief fund -
appropriation.
39-22-3003. Repeal of part.

PART 31

COLORADO EASTER SEALS
VOLUNTARY CONTRIBUTION

- 39-22-3101. Legislative declaration.
39-22-3102. Voluntary contribution designa-
tion - procedure.
39-22-3103. Contributions credited to the
Easter Seals Colorado dis-
ability fund - creation - ap-
propriation.
39-22-3104. Repeal of part.

PART 32

NATIONAL MULTIPLE SCLEROSIS
SOCIETY VOLUNTARY CONTRIBUTION

- 39-22-3201. Legislative declaration.
39-22-3202. Voluntary contribution designa-
tion - procedure.
39-22-3203. Contributions credited to the
Colorado multiple sclerosis
fund - creation - appropria-
tion.
39-22-3204. Repeal of part.

PART 33

COLORADO CANCER FUND
VOLUNTARY CONTRIBUTION

- 39-22-3301. Legislative declaration.
- 39-22-3302. Voluntary contribution designation - procedure.
- 39-22-3303. Contributions credited to the Colorado cancer fund - creation - appropriation.
- 39-22-3304. Repeal of part.

PART 34

9HEALTH FAIR VOLUNTARY
CONTRIBUTION

- 39-22-3401. Legislative declaration.
- 39-22-3402. Voluntary contribution designation - procedure.
- 39-22-3403. Contributions credited to the 9Health Fair fund - creation - appropriation.
- 39-22-3404. Repeal of part.

PART 35

ADULT STEM CELLS CURE FUND
VOLUNTARY CONTRIBUTION

- 39-22-3501. Voluntary contribution designation - procedure.
- 39-22-3502. Contributions credited to the adult stem cells cure fund - appropriation.
- 39-22-3503. Repeal of part.

PART 36

MAKE-A-WISH FOUNDATION OF
COLORADO VOLUNTARY
CONTRIBUTION

- 39-22-3601. Legislative declaration.
- 39-22-3602. Voluntary contribution designation - procedure.
- 39-22-3603. Contributions credited to the Make-A-Wish Foundation of Colorado fund - creation - appropriation.
- 39-22-3604. Repeal of part.

PART 37

COLORADO 2-1-1 FIRST CALL FOR HELP
FUND VOLUNTARY CONTRIBUTION

- 39-22-3701. Legislative declaration.
- 39-22-3702. Voluntary contribution designation - procedure.
- 39-22-3703. Contributions credited to the Colorado 2-1-1 first call for

help fund - creation - appropriation.

39-22-3704.

Repeal of part.

PART 38

UNWANTED HORSE FUND VOLUNTARY
CONTRIBUTION

- 39-22-3801. Legislative declaration.
- 39-22-3802. Voluntary contribution designation - procedure - effective date.
- 39-22-3803. Contributions credited to the unwanted horse fund - creation - appropriation.
- 39-22-3804. Repeal of part.

PART 39

GOODWILL INDUSTRIES VOLUNTARY
CONTRIBUTION

- 39-22-3901. Legislative declaration.
- 39-22-3902. Voluntary contribution designation - procedure - effective date.
- 39-22-3903. Contributions credited to the Goodwill Industries fund - creation - appropriation.
- 39-22-3904. Repeal of part.

PART 40

ROUNDUP RIVER RANCH VOLUNTARY
CONTRIBUTION

- 39-22-4001. Legislative declaration.
- 39-22-4002. Voluntary contribution designation - procedure - effective date.
- 39-22-4003. Contributions credited to the Roundup River Ranch fund - creation - appropriation.
- 39-22-4004. Repeal of part.

PART 41

FAMILIES IN ACTION FOR MENTAL
HEALTH VOLUNTARY CONTRIBUTION

- 39-22-4101. Legislative declaration.
- 39-22-4102. Voluntary contribution designation - procedure - effective date.
- 39-22-4103. Contributions credited to the Families in Action for Mental Health fund - creation - appropriation.
- 39-22-4104. Repeal of part.

PART 42

PUBLIC EDUCATION FUND VOLUNTARY CONTRIBUTION

- 39-22-4201. Legislative declaration.
- 39-22-4202. Voluntary contribution designation - procedure.
- 39-22-4203. Contributions credited to the public education fund - creation - appropriation.
- 39-22-4204. Repeal of part.

- 39-22-4303.
- 39-22-4304.

tion - procedure - effective date.
Contributions credited to the American Red Cross Colorado disaster response, readiness, and preparedness fund - creation - appropriation.
Repeal of part.

PART 44

COLORADO FOR HEALTHY LANDSCAPES FUND VOLUNTARY CONTRIBUTION

PART 43
AMERICAN RED CROSS COLORADO DISASTER RESPONSE, READINESS, AND PREPAREDNESS FUND VOLUNTARY CONTRIBUTION

- 39-22-4301. Legislative declaration.
- 39-22-4302. Voluntary contribution designation - procedure - effective date.

- 39-22-4401.
- 39-22-4402.
- 39-22-4403.
- 39-22-4404.

Legislative declaration.
Voluntary contribution designation - procedure - effective date.
Contributions credited to the Colorado for Healthy Landscapes fund - creation - appropriation.
Repeal of part.

PART 1

GENERAL

Editor’s note: This article was repealed and reenacted in 1964, and this part 1 was subsequently repealed and reenacted in 1987, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this part 1 prior to 1987, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume and the editor’s note following the article heading. Former C.R.S. section numbers prior to 1987 are shown in editor’s notes following those sections that were relocated.

39-22-101. Short title. This article shall be known and may be cited as the “Colorado Income Tax Act of 1987”.

Source: L. 87: Entire part R&RE, p. 1426, § 2, effective June 22.

Editor’s note: This section is similar to former § 39-22-101 as it existed prior to 1987.

ANNOTATION

Law reviews. For article, “The Problem of Tax Exempt Property in Colorado”, see 19 Rocky Mt. L. Rev. 22 (1946). For article, “Taxation Aspects of Divorce and Separation”, see 21 Rocky Mt. L. Rev. 397 (1949). For article, “Colorado Income Tax Act of 1964”, see 41 Den. L. Ctr. J. 337 (1964).

Applied in In re Golden State Bank v. Dolan, 37 Colo. App. 29, 543 P.2d 1307 (1975) (decided under law in effect prior to 1987 repeal and reenactment).

39-22-102. Legislative declaration. (1) The general assembly hereby finds, determines, and declares that the purposes of the “Colorado Income Tax Act of 1987” include, but are not limited to:

- (a) Simplifying the preparation of state income tax returns;
- (b) Aiding in the interpretation of the state income tax law through increased use of federal judicial and administrative determinations and precedents;

(c) Improving the enforcement of the state income tax laws through better use of information obtained from federal income tax audits.

Source: L. 87: Entire part R&RE, p. 1426, § 2, effective June 22.

Editor's note: This section is similar to former § 39-22-101 as it existed prior to 1987.

39-22-103. Definitions - construction of terms. As used in this article, unless the context otherwise requires:

(1) "Assessment" means the filing of the return as to the tax, penalty, and interest shown to be due thereon and, as to any other tax imposed under this article, or any deficiency in tax, or any penalty or interest, means the mailing or issuance of a notice and demand for payment.

(2) "Basic date" means July 1, 1937.

(2.5) "C corporation" means any organization taxed as a corporation for federal income tax purposes.

(3) "Domestic corporation" means a corporation organized under the laws of this state.

(4) "Executive director" means the executive director of the department of revenue.

(5) "Foreign corporation" means a corporation other than a domestic corporation.

(5.3) "Internal revenue code" means the provisions of the federal "Internal Revenue Code of 1986", as amended, and other provisions of the laws of the United States relating to federal income taxes, as the same may become effective at any time or from time to time, for the taxable year.

(5.5) (Deleted by amendment, L. 95, p. 816, § 40, effective May 24, 1995.)

(5.6) "Partnership" means any group or organization that is a partnership, as defined by section 761 (a) of the internal revenue code, and is required to file a return under section 6031 (a) of the internal revenue code.

(5.8) "Qualified higher deductible health plan" has the same meaning as that set forth in section 39-22-504.6 (3.5).

(6) "Resident beneficiary" means a beneficiary of an estate or trust, which beneficiary is a resident individual, a domestic corporation, a resident estate, a resident trust, or a partnership or a limited liability company organized under the laws of this state. "Nonresident beneficiary" means a beneficiary other than a resident beneficiary.

(7) "Resident estate" means the estate of a deceased person which is administered in this state in a proceeding other than an ancillary proceeding. "Nonresident estate" means an estate other than a resident estate.

(8) (a) "Resident individual" means a natural person who is domiciled in this state and a natural person who maintains a permanent place of abode within this state and who spends in the aggregate more than six months of the taxable year within this state.

(b) (I) "Resident individual" does not include, for income tax years commencing on or after January 1, 2001, any individual domiciled in this state who:

(A) Is absent from the state for a period of at least three hundred five days of the tax year and is stationed outside of the United States of America for active military duty; and

(B) Elects not to file a Colorado individual income tax return as a resident individual.

(II) "Resident individual" does not include the spouse of an individual described in subparagraph (I) of this paragraph (b) who accompanies such individual for the period of such individual's absence and who elects not to file a tax return as a resident individual.

(c) A "nonresident individual" means an individual other than a resident individual and an individual described in paragraph (b) of this subsection (8) who elects treatment as a nonresident individual.

(8.5) (Deleted by amendment, L. 95, p. 816, § 40, effective May 24, 1995.)

(9) "Resident partner" means a partner who is a resident individual, a domestic corporation, a resident estate, a resident trust, or a partnership or a limited liability company organized under the laws of this state. "Nonresident partner" means a partner other than a resident partner.

(10) "Resident trust" means a trust which is administered in this state. "Nonresident trust" means a trust other than a resident trust.

(10.5) "S corporation" means a corporation for which a valid election is in effect pursuant to section 1362 (a) of the internal revenue code.

(10.8) "Withholding certificate" means a document, which may be in paper or electronic form, utilized by an employee to instruct his or her employer to withhold taxes at a specific rate.

(11) Any term used in this article, except as otherwise expressly provided or clearly appearing from the context, shall have the same meaning as when used in a comparable context in the internal revenue code, as amended, in effect for the taxable period. Due consideration shall be given in the interpretation of this article to applicable sections of the internal revenue code in effect from time to time and to federal rulings and regulations interpreting such sections if such statute, rulings, and regulations do not conflict with the provisions of this article.

Source: L. 87: Entire part R&RE, p. 1426, § 2, effective June 22. L. 90: (5.5) and (8.5) added and (6) and (9) amended, p. 453, § 32, effective April 18. L. 92: (2.5), (5.3), and (10.5) added and (11) amended, p. 2265, § 4, effective April 16. L. 94: (5.8) added, p. 2839, § 1, effective January 1, 1995. L. 95: (2.5), (5.5), and (8.5) amended, p. 816, § 40, effective May 24. L. 96: (5.6) added, p. 335, § 1, effective April 16. L. 2000: (8) amended, p. 1298, § 1, effective January 1, 2001. L. 2002: (10.8) added, p. 530, § 1, effective August 7.

Editor's note: This section is similar to former § 39-22-103 as it existed prior to 1987.

Cross references: For the federal "Internal Revenue Code of 1986", see title 26 of the United States Code.

39-22-104. Income tax imposed on individuals, estates, and trusts - single rate - definitions - repeal. (1) Subject to subsection (2) of this section, with respect to taxable years commencing on or after January 1, 1987, but prior to January 1, 1999, a tax of five percent is imposed on the federal taxable income, as determined pursuant to section 63 of the internal revenue code, of every individual, estate, and trust.

(1.5) Subject to subsection (2) of this section, with respect to taxable years commencing on or after January 1, 1999, but prior to January 1, 2000, a tax of four and three-quarters percent is imposed on the federal taxable income, as determined pursuant to section 63 of the internal revenue code, of every individual, estate, and trust.

(1.7) Except as otherwise provided in section 39-22-627, subject to subsection (2) of this section, with respect to taxable years commencing on or after January 1, 2000, a tax of four and sixty-three one hundredths percent is imposed on the federal taxable income, as determined pursuant to section 63 of the internal revenue code, of every individual, estate, and trust.

(2) Prior to the application of the rate of tax prescribed in subsection (1), (1.5), or (1.7) of this section, the federal taxable income shall be modified as provided in subsections (3) and (4) of this section.

(3) There shall be added to the federal taxable income:

(a) Any federal net operating loss deduction carried over from a taxable year beginning prior to January 1, 1987;

(b) An amount equal to the interest income which is excluded from gross income for federal income tax purposes pursuant to section 103 (a) of the internal revenue code less amortization of premium on obligations of any state or any political subdivision thereof, other than interest income on obligations of the state of Colorado or any political subdivision thereof which are issued on or after May 1, 1980, and other than interest income on obligations of the state of Colorado or any political subdivision thereof which were issued prior to May 1, 1980, to the extent that such interest is specifically exempt from income taxation under the laws of the state of Colorado authorizing the issuance of such obligations. The amount of such interest shall be the net amount after reduction by the amount of the deductions related thereto which are required by the internal revenue code to be allocated to such classes of interest.

(c) The deduction allowed by section 402 (e) (3) of the internal revenue code;

(d) (I) For income tax years beginning on and after January 1, 1992, for those taxpayers who deduct state income taxes pursuant to section 164 (a) (3) of the internal revenue code, an amount equal to the deduction claimed; except that such amount shall be limited to the amount required to reduce the federal itemized amount computed under section 161 of the internal revenue code to the amount of the standard deduction allowable under section 63 (c) of the internal revenue code.

(II) For income tax years beginning on or after January 1, 2000, for two individuals whose federal taxable income is determined on a joint federal return and who deduct state income taxes pursuant to section 164 (a) (3) of the internal revenue code, an amount equal to the deduction claimed; except that such amount shall be limited to the amount required to reduce the federal itemized amount computed under section 161 of the internal revenue code to an amount equal to double the amount of the basic standard deduction allowable under section 63 (c) (2) of the internal revenue code in the case of an individual federal return for an individual who is not the head of a household plus any additional standard deduction allowable under section 63 (c) (3) of the internal revenue code, if applicable.

(e) (I) Any expenses incurred by a taxpayer with respect to expenditures made at, or payments made to, a club licensed pursuant to section 12-47-416, C.R.S., which has a policy to restrict membership on the basis of sex, sexual orientation, marital status, race, creed, religion, color, ancestry, or national origin. Any such club shall provide on each receipt furnished to a taxpayer a printed statement as follows:

The expenditures covered by this receipt are
nondeductible for state income tax purposes.

(II) The general assembly finds, determines, and declares that the people of the state of Colorado desire to promote and achieve tax equity and fairness among all the state's citizens and further desire to conform to the public policy of nondiscrimination. The general assembly further declares that the provisions of this paragraph (e) are enacted for these reasons and for no other purpose.

(f) Any amount withdrawn from a medical savings account pursuant to section 39-22-504.7 (3) (b) (II) or (3) (b) (III);

(g) For the income tax years commencing on or after January 1, 2000, an amount equal to the charitable contribution deduction allowed by section 170 of the internal revenue code to the extent such deduction includes a contribution of real property to a charitable organization for a conservation purpose for which an income tax credit is claimed pursuant to section 39-22-522;

(h) Repealed.

(i) An amount equal to a business expense for labor services that is deducted pursuant to section 162 (a) (1) of the internal revenue code but that is prohibited from being claimed as a deductible business expense for state income tax purposes pursuant to section 39-22-529.

(4) There shall be subtracted from federal taxable income:

(a) An amount equal to any interest income on obligations of the United States and its possessions to the extent included in federal taxable income;

(a.5) For income tax years commencing on and after January 1, 1990, an amount equal to any interest income earned on Colorado investment deposits issued by qualified financial institutions pursuant to article 37 of title 11, C.R.S., as that article existed prior to its repeal on July 1, 2004, to the extent included in federal taxable income, but not to exceed twenty thousand dollars in any taxable year;

(b) To the extent included in federal adjusted gross income, the portion of any gain or loss from the sale or other disposition of property having a higher adjusted basis for Colorado income tax purposes than for federal income tax purposes on the date such property was sold or disposed of in a transaction in which gain or loss was recognized for purposes of federal income tax that does not exceed such difference in basis;

(c) The amount necessary to prevent the taxation under this article of any annuity or other amount of income or gain which was properly included in income or gain and was taxed under the laws of this state for a prior tax year, to the taxpayer, or to a decedent by reason of whose death the taxpayer acquired the right to receive the income or gain, or to a trust or estate from which the taxpayer received the income or gain;

(d) The net operating loss deduction allowed under section 39-22-504 to the extent carried over from a taxable year beginning prior to January 1, 1987;

(e) The amount of any refund or credit for overpayment of income taxes imposed by this state or any other taxing jurisdiction to the extent included in gross income for federal income tax purposes but not previously allowed as a deduction for Colorado income tax purposes;

(f) (I) For income tax years commencing on or after January 1, 1989, amounts received as pensions or annuities from any source by any individual who is fifty-five years of age or older at the close of the taxable year, to the extent included in federal adjusted gross income or as added in paragraph (c) of subsection (3) of this section;

(II) For income tax years commencing on or after January 1, 1989, amounts received as pensions or annuities from any source by any individual who is less than fifty-five years of age at the close of the taxable year if such benefits are received because of the death of the person originally entitled to receive such benefits and only to the extent such benefits are included in federal adjusted gross income or as added in paragraph (c) of subsection (3) of this section;

(III) For income tax years commencing on or after January 1, 1989, amounts subtracted under this paragraph (f) shall not exceed twenty thousand dollars per tax year; except that, for income tax years commencing on or after January 1, 2000, amounts subtracted under subparagraph (I) of this paragraph (f) shall not exceed twenty-four thousand dollars per tax year for any individual who is sixty-five years of age or older at the close of the taxable year. For the purpose of determining the exclusion allowed by this paragraph (f), in the case of a joint return, social security benefits included in federal taxable income shall be apportioned in a ratio of the gross social security benefits of each spouse to the total gross social security benefits of both spouses. For the purposes of this paragraph (f), "pensions and annuities" means retirement benefits that are periodic payments attributable to personal services performed by an individual prior to his or her retirement from employment and that arise from an employer-employee relationship, from service in the uniformed services of the United States, or from contributions to a retirement plan which are deductible for federal income tax purposes. "Pensions and annuities" includes lump-sum distributions from pension and profit sharing plans to the extent that such distributions qualify for the tax-averaging computation under section 402 (e) (1) of the internal revenue code, distributions from individual retirement arrangements and self-employed retirement accounts to the extent that such distributions are not deemed to be premature distributions for federal income tax purposes, amounts received from fully matured privately purchased annuities, social security benefits, and amounts paid from any such sources by reason of permanent disability or death of the person entitled to receive the benefits.

(g) Repealed.

(h) Any amount contributed to a medical savings account by an employer pursuant to section 39-22-504.7 (2) (e), to the extent such amount is not claimed as a deduction on the taxpayer's federal tax return;

(i) (I) For income tax years commencing on or after January 1, 1998, an amount equal to the portion attributable to interest and other income of a distribution under a qualified state tuition program that is distributed for the purpose of meeting qualified higher education expenses of a designated beneficiary, to the extent such amount is included in federal taxable income;

(II) For income tax years commencing on or after January 1, 2001, an amount equal to all payments or contributions made during the taxable year under an advance payment contract, to a savings trust account, or otherwise in connection with a qualified state tuition program established by collegeinvest created in section 23-3.1-203, C.R.S., or to a qualified state tuition program that is affiliated with an educational institution in the state and that is

established and maintained pursuant to section 529 of the internal revenue code or any successor section;

(III) No exclusion shall be allowed pursuant to this paragraph (i) to the extent that such payments or contributions are excluded from the taxpayer's federal taxable income for the taxable year. Any exclusion taken under this paragraph (i) shall be subject to recapture in the taxable year or years in which any distribution, refund, or any other withdrawal is made pursuant to an advance payment contract, from a savings trust account, or otherwise in connection with a qualified state tuition program for any reason other than:

(A) To pay qualified higher education expenses;

(B) As a result of the beneficiary's death or disability; or

(C) As a result of receiving a scholarship and as long as the aggregate amount of distributions, refunds, or withdrawals made pursuant to this sub-subparagraph (C) do not exceed the amount of the scholarship provided during such tax year.

(IV) As used in this paragraph (i), "designated beneficiary" means a designated beneficiary as defined in section 529 (e) (1) of the internal revenue code, "qualified state tuition program" means a qualified state tuition program as defined in section 529 (b) of the internal revenue code, and "qualified higher education expenses" means qualified higher education expenses as defined in section 529 (e) (3) of the internal revenue code.

(j) For income tax years commencing on or after January 1, 2000, for two individuals whose federal taxable income is determined on a joint federal return and who claim the basic standard deduction allowable under section 63 (c) (2) of the internal revenue code, an amount equal to the difference between an amount equal to double the amount of the basic standard deduction allowable under section 63 (c) (2) of the internal revenue code in the case of an individual federal return for an individual who is not the head of a household and the amount of the basic standard deduction allowable under section 63 (c) (2) of the internal revenue code in the case of a joint federal return.

(k) For income tax years commencing on or after January 1, 2000, for two individuals whose federal taxable income is determined on a joint federal return and who claim itemized deductions in an amount that is greater than the amount of the basic standard deduction allowable under section 63 (c) (2) of the internal revenue code plus any additional standard deduction allowable under section 63 (c) (3) of the internal revenue code, if applicable, in the case of a joint federal return, but less than double the amount of the basic standard deduction allowable under section 63 (c) (2) of the internal revenue code plus any additional standard deduction allowable under section 63 (c) (3) of the internal revenue code, if applicable, in the case of an individual federal return for an individual who is not the head of a household, an amount equal to the difference between an amount equal to double the amount of such basic standard deduction allowable in the case of an individual federal return for an individual who is not the head of a household plus any additional standard deduction allowable to either individual and the amount of the itemized deductions claimed by the resident individuals.

(l) and (l.5) Repealed.

(m) (I) For any income tax year commencing on or after January 1, 2001, for any individual who claims the basic standard deduction allowed under section 63 (c) (2) of the internal revenue code on the individual's federal return and, therefore, cannot claim an itemized deduction for charitable contributions pursuant to section 170 of the internal revenue code, an amount equal to the amount of any deduction based upon the aggregate amount of charitable contributions in excess of five hundred dollars that the individual could have claimed pursuant to section 170 of the internal revenue code if the individual had not claimed the basic standard deduction.

(II) Any state income tax modification allowed pursuant to the provisions of subparagraph (I) of this paragraph (m) shall be published in rules promulgated by the executive director in accordance with article 4 of title 24, C.R.S., and shall be included in income tax forms for that taxable year.

(III) to (VI) Repealed.

(n) (I) (A) For income tax years commencing on or after January 1, 2009, but prior to January 1, 2014, an amount equal to fifty percent of a landowner's costs incurred in performing wildfire mitigation measures in that income tax year on his or her property

located within the state; except that the amount of the deduction claimed in an income tax year shall not exceed two thousand five hundred dollars or the total amount of the landowner's federal taxable income for the income tax year for which the deduction is claimed, whichever is less.

(B) In the case of two individuals filing a joint return, the amount subtracted from federal taxable income shall not exceed two thousand five hundred dollars in any taxable year. In the case of a married individual who files a separate return, only one individual in the marriage may claim the deduction specified in this paragraph (n).

(C) In the case of real property owned as tenants in common, the deduction allowed pursuant to this paragraph (n) shall only be allowed to one of the individuals of the ownership group.

(II) A landowner who performs wildfire mitigation measures on his or her real property located within the state may claim the deduction authorized by this paragraph (n) if the wildfire mitigation measures are performed in a wild land-urban interface area and are authorized by a community wildfire protection plan adopted by a local government within the interface area.

(III) For purposes of this paragraph (n), unless the context otherwise requires:

(A) "Colorado state forest service" means the Colorado state forest service identified in section 23-31-310 (2) (c), C.R.S.

(B) "Community wildfire protection plan" means a plan approved by any local government entities, local fire departments, and the Colorado state forest service that meets the definition of a community wildfire protection plan in the federal "Healthy Forests Restoration Act of 2003", Pub.L. 108-148, and meets the minimum requirements of collaboration by local and state government representatives with consultation by federal agencies and other interested parties, prioritized fuel reduction areas with identified types of treatments, and treatment of structural ignitability with recommendations to reduce ignitability.

(C) "Costs" means any actual out-of-pocket expense incurred and paid by the landowner, documented by receipt, for performing wildfire mitigation measures. Costs do not include any inspection or certification fees, in-kind contributions, donations, incentives, or cost sharing associated with performing wildfire mitigation measures. Costs do not include expenses paid by the landowner from any grants awarded to the landowner for performing wildfire mitigation measures.

(D) "Landowner" means any owner of record of private land located within the state, including any easement, right-of-way, or estate in the land, and includes the heirs, successors, and assigns of such land, and shall not include any partnership, S corporation, or other similar entity that owns private land as an entity.

(E) "Wildfire mitigation measures" means the creation of a defensible space around structures; the establishment of fuel breaks; the thinning of woody vegetation for the primary purpose of reducing risk to structures from wildland fire; or the secondary treatment of woody fuels by lopping and scattering, piling, chipping, removing from the site, or prescribed burning; so long as such activities meet or exceed any Colorado state forest service standards or any other applicable state rules.

(IV) This paragraph (n) is repealed, effective January 1, 2015.

(o) For income tax years commencing on or after January 1, 2011, an amount equal to any amount received as employer matching contributions to an adult learner's individual trust account or savings account made pursuant to part 3 of article 3.1 of title 23, C.R.S.

(5) Any person who is required by the terms of this article to file a return whose only activities in Colorado consist of making sales, who does not own or rent real estate within the state of Colorado, and whose annual gross sales in or into this state amount to not more than one hundred thousand dollars may elect to pay a tax of one-half of one percent of his annual gross receipts derived from sales in or into Colorado in lieu of paying an income tax.

Source: **L. 87:** Entire part R&RE, p. 1427, § 2, effective June 22. **L. 88:** (1), (3)(b), and (4)(f) amended, p. 1311, § 2, effective May 29. **L. 89:** (4)(f) amended and (4)(g) repealed, pp. 1504, 1506, §§ 1, 3, effective June 10. **L. 90:** (4)(a.5) added, p. 699, § 2, effective May 31. **L. 92:** (3)(d) added, p. 555, § 37, effective May 28; (3)(e) added, p. 2279, § 2,

effective June 1. **L. 94:** (3)(f) and (4)(h) added, p. 2839, §§ 2, 3, effective January 1, 1995. **L. 97:** (3)(e)(I) amended, p. 304, § 20, effective July 1; (4)(i) added, p. 513, § 1, effective August 6. **L. 99:** (4)(l) added, p. 784, § 1, effective May 24; (1) amended and (1.5) added, p. 1376, § 1, effective August 4; (3)(d) amended and (4)(j) and (4)(k) added, pp. 936, 937, §§ 1, 2, effective August 4; (3)(g) added, p. 977, § 2, effective August 4; (4)(f) amended, p. 1301, § 1, effective August 4. **L. 2000:** (4)(l)(I), (4)(l)(III), (4)(l)(IV)(A), (4)(l)(IV)(B), and (4)(l)(V) amended and (4)(1.5) added, p. 658, § 1, effective May 22; (4)(m) added, p. 1409, § 1, effective May 31; (1.5) and (2) amended and (1.7) added, p. 1413, § 1, effective August 2; (2) amended, p. 1869, § 98, effective August 2; (3)(h) added, p. 1321, § 3, effective August 2; (4)(i) amended, p. 946, § 1, effective August 2. **L. 2001:** (4)(l)(VI) amended, p. 1279, § 54, effective June 5; (3)(d)(II) and (4)(k) amended, p. 392, § 2, effective August 8. **L. 2004:** (4)(a.5) amended, p. 323, § 8, effective April 7; (4)(i)(II) amended, p. 577, § 36, effective July 1; (3)(g) amended, p. 1208, § 88, effective August 4. **L. 2005:** (4)(m) amended, p. 215, § 1, effective April 8; (1.7) amended, p. 1361, § 1, effective June 6. **Referred 2006:** (3)(i) added, L. 2006, 1st Ex. Sess., p. 1, § 1, December 31. **L. 2008:** (3)(e)(I) amended, p. 1604, § 35, effective May 29; (4)(n) added, p. 1550, § 1, effective August 5. **L. 2010:** (4)(o) added, (SB 10-202), ch. 396, p. 1884, § 8, effective June 9; (3)(h), (4)(l), (4)(1.5), (4)(m)(III), (4)(m)(IV), (4)(m)(V), and (4)(m)(VI) repealed and (4)(m)(I) amended, (SB 10-212), ch. 412, pp. 2032, 2034, §§ 1, 7, effective July 1; (3)(h) repealed, (HB 10-1256), ch. 133, p. 440, § 2, effective August 11.

Editor's note: (1) This section is similar to former § 39-22-104 as it existed prior to 1987.

(2) Subsection (5) of this section implements the requirements of Article III, section 2, of the Multistate Tax Compact, § 24-60-1301.

(3) Amendments to subsection (2) by House Bill 00-1103 and House Bill 00-1463 were harmonized.

(4) Subsection (3)(i) was enacted by House Bill 06S-1020 at the first extraordinary session of the sixty-fifth general assembly. That bill contained a referendum clause and was approved by a vote of the registered electors of the state of Colorado on November 7, 2006. Subsection (3)(i) was effective upon proclamation of the governor, December 31, 2006. The vote count for the measure was as follows:

FOR: 744,475

AGAINST: 722,651

Cross references: (1) For other provisions concerning adjustments to federal taxable income, see §§ 39-22-104.5, 39-22-104.6, 39-22-504.7 (2), and 39-22-518.

(2) For the legislative declaration contained in the 2001 act amending subsections (3)(d)(II) and (4)(k), see section 1 of chapter 133, Session Laws of Colorado 2001.

(3) For the legislative declaration contained in the 2008 act amending subsection (3)(e)(I), see section 1 of chapter 341, Session Laws of Colorado 2008.

ANNOTATION

Law reviews. For article, "2006 Immigration Legislation in Colorado", see 35 Colo. Law. 79 (October 2006).

The tax exemption provisions of subsection (4) do not create a contract protected by the contract clause of the constitution. *Spradling v. Colo. Dept. of Rev.*, 870 P.2d 521 (Colo. App. 1993).

State income tax may be levied on the sale of cocaine by drug supplier since state law provides that income derived from any source is taxable. *Eggleston v. Colo.*, 636 F. Supp. 1312 (D. Colo. 1986), rev'd on other grounds, 873 F.2d 242 (10th Cir. 1989) (decided under former law).

Subsection (4)(g) regarding military retirement benefits (now repealed) held unconstitutional because it discriminated between taxpayers based on the source of their income. Nonmilitary retirees under age 55 were allowed a twenty-thousand-dollar tax exemption on retirement benefits, while military retirees of the same age were only allowed a two-thousand-dollar exemption, violating 4 U.S.C. sec. 111 (1988) and case law. Taxpayers who overpaid based upon this unconstitutional provision were entitled to a refund as provided in § 39-22-1201. *Kuhn v. State Dept. of Rev.*, 817 P.2d 101 (Colo. 1991).

39-22-104.5. Pretax payments - catastrophic health insurance. For income tax years commencing on or after January 1, 1995, amounts withheld from an individual's wages that are used to pay for catastrophic health insurance pursuant to and within the limitations prescribed by section 10-16-117, C.R.S., are excluded from the individual's federal taxable income for purposes of the state income tax imposed by section 39-22-104.

Source: L. 94: Entire section added, p. 745, § 2, effective January 1, 1995; entire section amended, p. 1651, § 97, effective January 1, 1995.

Cross references: For other provisions concerning adjustments to federal taxable income, see § 39-22-104.

39-22-104.6. Pretax payments - medical savings accounts. To the extent a taxpayer is not otherwise claiming deductions on federal income tax returns for contributions to medical savings accounts, amounts withheld from an individual's wages which are contributed to such individual's medical savings account, pursuant to section 39-22-504.7, are excluded from an individual's federal taxable income for purposes of the state income tax imposed by section 39-22-104.

Source: L. 94: Entire section added, p. 745, § 4, effective January 1, 1995. **L. 97:** Entire section amended, p. 643, § 10, effective May 1.

Cross references: For other provisions concerning adjustment to federal taxable income, see § 39-22-104.

39-22-105. Alternative minimum tax. (1) With respect to each taxable year commencing on or after January 1, 1987, but prior to January 1, 2000, for every individual, estate, and trust, in addition to the tax imposed in section 39-22-104, a tax is imposed in an amount equal to the excess of:

(a) Three and seventy-five one-hundredths percent of the Colorado alternative minimum taxable income, as determined pursuant to subsection (2) of this section; over

(b) The tax imposed in section 39-22-104.

(1.5) With respect to each taxable year commencing on or after January 1, 2000, for every individual, estate, and trust, in addition to the tax imposed in section 39-22-104, a tax is imposed in an amount equal to the excess of:

(a) Three and forty-seven one-hundredths percent of the Colorado alternative minimum taxable income, as determined pursuant to subsection (2) of this section; over

(b) The tax imposed in section 39-22-104.

(2) (a) The Colorado alternative minimum taxable income shall be the federal alternative minimum taxable income, as determined pursuant to section 55 of the internal revenue code, minus the applicable federal exemptions allowed pursuant to such section, with the modifications provided in section 39-22-104; except that any state or local bond interest included in the federal alternative minimum taxable income shall not be added back in determining the Colorado alternative minimum taxable income, and any interest income from obligations of the state of Colorado or any political subdivision thereof which is exempt from the Colorado tax imposed pursuant to the provisions of section 39-22-104 (3) (b) shall be subtracted from the federal alternative minimum taxable income to the extent included therein in determining Colorado alternative minimum taxable income.

(b) In any case, should the tax determined under the provisions of this section for a taxable year beginning on or after January 1, 1987, but before January 1, 1988, exceed the tax imposed by this section as it existed on June 22, 1987, then only the smaller tax shall apply.

(3) (a) For taxable years beginning on or after January 1, 1988, but prior to January 1, 2000, each individual, estate, and trust shall be allowed a credit against the tax imposed by this part 1 in an amount equal to eighteen percent of the credit allowed for the same tax year by section 53 of the internal revenue code.

(b) For taxable years beginning on or after January 1, 2000, each individual, estate, and trust shall be allowed a credit against the tax imposed by this part 1 in an amount equal to twelve percent of the credit allowed for the same tax year by section 53 of the internal revenue code.

(4) In the case of a nonresident taxpayer, the tax imposed by subsections (1) and (1.5) of this section and the credit allowed by subsection (3) of this section shall be apportioned in the ratio of the modified federal alternative minimum taxable income from Colorado sources over the total modified federal alternative minimum taxable income.

Source: L. 87: Entire part R&RE, p. 1429, § 2, effective June 22. L. 88: Entire section R&RE, p. 1312, § 3, effective May 29. L. 2000: IP(1), (3), and (4) amended and (1.5) added, p. 1413, § 2, effective August 2.

Editor's note: This section is similar to former § 39-22-104 as it existed prior to 1987.

39-22-106. Colorado personal exemptions of a resident individual. A resident individual shall be entitled to a Colorado exemption of zero dollars.

Source: L. 87: Entire part R&RE, p. 1430, § 2, effective June 22.

Editor's note: This section is similar to former § 39-22-114 as it existed prior to 1987.

39-22-107. Income tax filing status. (1) If the federal taxable income of a husband or wife, or both, is determined on separate federal returns, such income for purposes of the Colorado income tax shall be separately determined.

(2) If the federal taxable income of a husband and wife is determined on a joint federal return, their tax shall be determined on their joint federal taxable income.

(3) Repealed.

Source: L. 87: Entire part R&RE, p. 1430, § 2, effective June 22. L. 88: (3) repealed, p. 1317, § 17, effective May 29.

Editor's note: This section is similar to former § 39-22-109 as it existed prior to 1987.

39-22-107.5. Income tax filing status - innocent spouse relief. In any case in which a taxpayer has been granted relief under section 6015 of the internal revenue code, such taxpayer shall also be granted comparable relief from joint and several liability for the tax imposed under this article and any interest, penalties, and other amounts related to such tax.

Source: L. 2001: Entire section added, p. 37, § 1, effective August 8.

39-22-108. Credit for tax paid other states. (1) With respect to all taxable years commencing on or after January 1, 1987, the amount of taxes on federal taxable income accrued to another state, the District of Columbia, or a territory or possession of the United States, on income derived by a resident individual, estate, or trust from sources in another state, the District of Columbia, or a territory or possession of the United States, shall be allowed as a credit against the tax computed under provisions of this article.

(2) The amount of credit taken under this section shall be subject to each of the following limitations:

(a) The amount of the credit for taxes on the federal taxable income taxed by another state, the District of Columbia, or a territory or possession of the United States shall not exceed the same proportion of the tax against which such credit is taken which the taxpayer's federal taxable income from the sources within such state, the District of Columbia, or a territory or possession of the United States bears to his entire federal taxable income for the same period;

(b) The total amount of the credit shall not exceed the same proportion of the tax against which such credit is taken which the taxpayer's federal taxable income from sources outside of Colorado bears to his entire federal taxable income for the same taxable year; and

(c) Federal taxable income shall be deemed to be from sources in another state in the same ratio as the modified federal adjusted gross income is from sources in such state.

(3) If accrued taxes when paid differ from the amounts claimed as credits by the taxpayer or if any tax paid is refunded in whole or in part, the taxpayer shall notify the executive director, who shall redetermine the amount of tax due for the years affected; the amount of tax, if any, found to be due upon such redetermination shall be paid by the taxpayer upon notice and demand or the amount of tax overpaid, if any, shall be credited or refunded to the taxpayer in accordance with the provisions of section 39-21-108. In the case of such a tax accrued but not paid, the executive director, as a condition precedent to the allowance of a credit, may require the taxpayer to deposit a surety bond or other security acceptable to the executive director in such amount as he may require, conditioned upon the payment by the taxpayer of any amount of tax found to be due upon any such redetermination.

(4) The credits provided for in this section, irrespective of the method of accounting employed by the taxpayer in keeping his books, shall be taken in the year in which the taxes of another state, the District of Columbia, or a territory or possession of the United States accrue, subject to the conditions prescribed in subsection (3) of this section.

(5) The credits provided by this section shall be allowed only if the taxpayer furnishes to the executive director all information necessary for the verification and computation of such credits as the executive director, by regulation, may prescribe.

Source: L. 87: Entire part R&RE, p. 1430, § 2, effective June 22. L. 88: (2)(a) and (2)(b) amended and (2)(c) added, p. 1313, § 4, effective May 29.

Editor's note: This section is similar to former § 39-22-108 as it existed prior to 1987.

39-22-108.5. Dual resident trusts - income tax calculation. (1) With respect to a trust that is a resident of another state and becomes a resident of Colorado after May 25, 2006, and that is subject to income taxes in the other state and in Colorado by virtue of the trust's dual residence, the executive director shall, in lieu of the credit granted in section 39-22-108 (1), allow a credit to the Colorado income tax to be determined in accordance with this section.

(2) The credit amount shall be equal to the Colorado income tax imposed on the portion of the trust's income that is subject to tax in Colorado and the other state, multiplied by a percentage equal to the other state's income tax rate for the income tax year divided by the sum of the income tax rates of Colorado and the other state for the income tax year.

(3) If the credit amount in subsection (2) of this section is computed using more than one other state, the percentage used shall equal the combined total of all the other states' income tax rates for the income tax year divided by the combined income tax rates of Colorado and the other states for the income tax year.

(4) For purposes of this section, "state income tax rate" means the trust's state income tax liability divided by the trust's taxable income used to compute the state income tax liability.

(5) The provisions of section 39-22-108 (3), (4), and (5) shall apply to this section.

Source: L. 2006: Entire section added, p. 1163, § 1, effective May 25.

39-22-109. Income of a nonresident individual for purposes of Colorado income tax. (1) In the case of a nonresident individual, the tax imposed by section 39-22-104 shall be apportioned in the ratio of Colorado nonresident federal adjusted gross income to total federal adjusted gross income, both modified as provided in section 39-22-104.

(2) (a) Colorado nonresident federal adjusted gross income means that part of the individual's federal adjusted gross income as determined pursuant to section 62 of the

internal revenue code derived from sources within Colorado. Federal adjusted gross income of an individual shall be considered derived from sources within Colorado when such income is attributable to:

- (I) The ownership of any interest in real or tangible personal property in Colorado;
 - (II) A business, trade, profession, or occupation carried on in Colorado;
 - (III) His distributive share of partnership or limited liability company income, gain, loss, and deduction determined under section 39-22-203;
 - (IV) His share of estate or trust income, gain, loss, and deduction determined under section 39-22-404;
 - (V) Income from intangible personal property, including annuities, dividends, interest, and gains from the disposition of intangible personal property to the extent that such income is from property employed in a business, trade, profession, or occupation carried on in Colorado. A nonresident, other than a dealer holding property primarily for sale to customers in the ordinary course of his trade or business, shall not be deemed to carry on a business, trade, profession, or occupation in Colorado solely by reason of the purchase and sale of property for his own account.
 - (VI) His share of subchapter S corporation income, gain, loss, credit, and deduction allocable or apportionable to Colorado.
- (b) Compensation paid by the United States for service in the armed forces of the United States performed by an individual not domiciled in Colorado shall not constitute income derived from sources within Colorado.
- (3) (a) If the federal taxable income of a husband or wife, or both, both of whom are nonresidents, is determined on separate federal returns, their Colorado taxable incomes shall be separately determined.
- (b) If the federal taxable income of a husband and wife, both of whom are nonresidents, is determined on a joint federal return, their tax shall be determined on their joint Colorado nonresident federal taxable income.
- (c) Repealed.
- (4) In any case, where the nature of income earned by a nonresident individual is such as to render the computations described in subsections (1) to (3) of this section impracticable and where the books of account and records of the taxpayer do not clearly reflect the income subject to tax by this article, apportionment shall be made in accordance with section 39-22-303.5.

Source: **L. 87:** Entire part R&RE, p. 1431, § 2, effective June 22. **L. 88:** (1), IP(2)(a), and (2)(b) R&RE and (3)(c) repealed, pp. 1313, 1317, §§ 5, 17, effective May 29. **L. 90:** (2)(a)(III) amended, p. 453, § 33, effective April 18. **L. 2008:** (4) amended, p. 954, § 5, effective January 1, 2009.

Editor's note: This section is similar to former § 39-22-115 as it existed prior to 1987.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Federal law not determinative of nonresidents' interests for state income taxation purposes. For purposes of state income taxation, federal law is not determinative of the characterization of the interests of nonresidents who are granted oil and gas leases for federal lands located in Colorado. *Hagood v. Heckers*, 182 Colo. 337, 513 P.2d 208 (1973).

Lessee's interest in gas and oil lease is interest in real estate. *Hagood v. Heckers*, 31

Colo. App. 172, 502 P.2d 961 (1972), *aff'd*, 182 Colo. 337, 513 P.2d 208 (1973).

For purposes of state income taxation, the overriding royalty interests of nonresidents who are granted oil and gas leases for federal lands located in Colorado are to be considered interests in real property. *Hagood v. Heckers*, 182 Colo. 337, 513 P.2d 208 (1973).

Subchapter S corporation income attributable to nonresident shareholders is not subject to taxation in Colorado. *Meyer v. Charnes*, 705 P.2d 979 (Colo. App. 1985).

39-22-110. Apportionment of tax in the case of a part-year resident. (1) In the case of an individual who is a resident of Colorado for part of his taxable year, the tax imposed by section 39-22-104 shall be apportioned in the ratio of that part of his federal adjusted gross income which relates to the period of the year he was a Colorado resident to his total federal adjusted gross income, both modified as provided in section 39-22-104.

(2) A taxpayer filing a part-year resident return shall also file as a nonresident on the same return as provided in section 39-22-109 for the remaining portion of his federal taxable year in the event the taxpayer has income within such remaining portion derived from sources within Colorado, as defined in section 39-22-109 (2).

(3) Repealed.

(4) In determining apportioned federal adjusted gross income which relates to the period of the year a part-year resident was a resident as required in subsection (1) of this section, S corporation income shall be apportioned as provided in section 39-22-326.

Source: **L. 87:** Entire part R&RE, p. 1432, § 2, effective June 22. **L. 88:** (1) R&RE and (3) repealed, pp. 1314, 1317, §§ 6, 17, effective May 29. **L. 92:** (4) added, p. 2266, § 5, effective April 16.

Editor's note: This section is similar to former § 39-22-116 as it existed prior to 1987.

39-22-111. Accounting periods and methods. (1) The taxpayer's taxable year under this article shall be the same as his taxable year for federal income tax purposes.

(2) If a taxpayer's taxable year is changed for federal income tax purposes, his taxable year for purposes of this article shall be similarly changed.

(3) The taxpayer's method of accounting under this article shall be the same as his method of accounting for federal income tax purposes.

(4) If a taxpayer's method of accounting is changed for federal income tax purposes, his method of accounting for purposes of this article shall be similarly changed.

Source: **L. 87:** Entire part R&RE, p. 1432, § 2, effective June 22.

Editor's note: This section is similar to former § 39-22-107 as it existed prior to 1987.

39-22-112. Persons and organizations exempt from tax under this article. (1) A person or organization exempt from federal income taxation under the provisions of the internal revenue code shall also be exempt from the tax imposed by this article in each year in which such person or organization satisfies the requirements of the internal revenue code for exemption from federal income taxation; except that insurance companies subject to the tax imposed on gross premiums by section 10-3-209, C.R.S., shall also be exempt from the tax imposed by this article. If the exemption applicable to any person or organization under the provisions of the internal revenue code is limited or qualified in any manner, the exemption from taxes imposed by this article shall be limited or qualified in a similar manner.

(2) Notwithstanding the provisions of subsection (1) of this section to the contrary, the unrelated business taxable income, as computed under the provisions of the internal revenue code, of any person or organization otherwise exempt from the tax imposed by this article and subject to the tax imposed on unrelated business income by the internal revenue code shall be subject to the tax which would have been imposed by this article but for the provisions of subsection (1) of this section.

Source: **L. 87:** Entire part R&RE, p. 1433, § 2, effective June 22.

Editor's note: This section is similar to former § 39-22-111 as it existed prior to 1987.

39-22-113. Tax credit or refund for persons with disabilities who are employed - amount - applicability. (Repealed)

Source: L. 87: Entire part R&RE, p. 1433, § 2, effective June 22. L. 93: (1), (2), (3)(a), and (3)(b)(I) amended, p. 1670, § 88, effective July 1. L. 2004: Entire section repealed, p. 207, § 32, effective August 4.

Editor's note: Before its repeal, this section was similar to former § 39-22-126 as it existed prior to 1987.

39-22-114. Residential energy credit. (Repealed)

Source: L. 87: Entire part R&RE, p. 1434, § 2, effective June 22. L. 2002: (5)(c) amended, p. 1557, § 349, effective October 1. L. 2004: Entire section repealed, p. 208, § 33, effective August 4.

Editor's note: Before its repeal, this section was similar to former § 39-22-127 as it existed prior to 1987.

39-22-114.5. Tax credit for investment in technologies for recycling plastics.

(1) There shall be allowed to each resident individual, as a credit against the income taxes imposed by this article, a plastic recycling credit equal to twenty percent of net expenditures to third parties for rent, wages, supplies, consumable tools, equipment, test inventory, and utilities up to ten thousand dollars made by the taxpayer for new plastic recycling technology in Colorado, with a maximum credit of two thousand dollars. The tax credit allowed in this section shall be applicable only to income related to the expenditures described in this subsection (1).

(2) If the credit allowed under this section exceeds the income taxes otherwise due on the claimant's income, the amount of the credit not used as an offset against income taxes may be carried forward as a tax credit against subsequent years' income tax liability for a period not exceeding five years and shall be applied first to the earliest years possible.

(3) Any form filed with the department of revenue for the purpose of claiming the credit allowed by this section shall be accompanied by copies of any receipts, bills, or other documentation of the qualified expenditures claimed for the purpose of receiving such credit.

Source: L. 89: Entire section added, p. 1182, § 3, effective July 1.

39-22-115. Credit for crops or livestock contributed to charitable organizations - definitions. (Repealed)

Source: L. 87: Entire part R&RE, p. 1435, § 2, effective June 22. L. 2004: Entire section repealed, p. 209, § 34, effective August 4.

Editor's note: Before its repeal, this section was similar to former § 39-22-128 as it existed prior to 1987.

39-22-116. Tax tables for individuals. (1) In lieu of the tax imposed by section 39-22-104, there is hereby imposed for each taxable year on the federal taxable income of every individual for Colorado income tax purposes who does not itemize his deductions for the taxable year and whose federal taxable income for Colorado income tax purposes for such taxable year does not exceed the ceiling amount a tax determined under tables applicable to such taxable year, which shall be prescribed by the executive director and which shall be in such form as he deems appropriate. In the tables so prescribed, the amount of the tax shall be computed on the basis of the rate prescribed by section 39-22-104.

(2) For purposes of subsection (1) of this section, "ceiling amount" means, with respect to any taxpayer, the amount, not less than twenty thousand dollars, determined by the executive director for the tax rate category in which such taxpayer falls.

(3) Repealed.

(4) For purposes of this article, the tax imposed by this section shall be treated as the tax imposed by section 39-22-104.

(5) Whenever it is necessary to determine the federal taxable income of an individual for Colorado income tax purposes to whom this section applies, the federal taxable income for Colorado income tax purposes shall be determined under section 39-22-104.

(6) The executive director may provide that this section shall apply for any taxable year to individuals who itemize their deductions.

Source: **L. 87:** Entire part R&RE, p. 1436, § 2, effective June 22. **L. 88:** (1) amended and (3) repealed, pp. 1314, 1317, §§ 7, 17, effective May 29.

39-22-117. Uninsurable health plan charge - repeal. (Repealed)

Source: **L. 90:** Entire section added, p. 640, § 2, effective July 1; (3) added by revision, p. 641, § 5.

Editor's note: Subsection (3) provided for the repeal of this section, effective July 1, 1993. (See L. 90, p. 641.)

39-22-118. Grants for members of United States armed services - combat pay received during active duty in Operation Desert Storm - amount - applicability - repeal. (Repealed)

Source: **L. 91:** Entire section added, p. 1998, § 1, effective May 1. **L. 92:** (2) amended, p. 1067, § 2, effective March 16.

Editor's note: Subsection (3) provided for the repeal of this section, effective June 15, 1994. (See L. 91, p. 1998.)

39-22-119. Expenses related to child care - credits against state tax. (1) (a) For income tax years beginning on and after January 1, 1996, if a resident individual claims a credit for child care expenses on the individual's federal tax return, the individual shall be allowed a child care expenses credit against the income taxes due on the individual's income under this article calculated as follows:

(I) If the resident individual's federal adjusted gross income is twenty-five thousand dollars or less, the credit shall be in an amount equal to fifty percent of the credit for child care expenses claimed on the resident individual's federal tax return.

(II) If the resident individual's federal adjusted gross income is between twenty-five thousand one dollars and thirty-five thousand dollars, the credit shall be in an amount equal to thirty percent of the credit for child care expenses claimed on the resident individual's federal tax return.

(III) If the resident individual's federal adjusted gross income is between thirty-five thousand one dollars and sixty thousand dollars, the credit shall be in an amount equal to ten percent of the credit for child care expenses claimed on the resident individual's federal tax return.

(b) If the resident individual's federal adjusted gross income is sixty thousand one dollars or more, the resident individual shall not be allowed a credit under this subsection (1).

(1.5) Repealed.

(2) If the credits allowed under subsection (1) of this section exceed the income taxes due on the resident individual's income, the amount of the credits not used to offset income

taxes shall not be carried forward as tax credits against the resident individual's subsequent years' income tax liability and shall be refunded to the individual.

(3) The child care expenses credits allowed under subsection (1) of this section shall not be allowed to a resident individual who is receiving child care assistance from the state department of human services except to the extent of the taxpayer's unreimbursed out-of-pocket expenses that result in a federal credit for child care expenses.

(4) In the case of a resident for part of a tax year, the credits allowed by this section shall be apportioned in the ratio determined under section 39-22-110 (1).

(5) to (9) Repealed.

Source: L. 96: Entire section added, p. 1096, § 1, effective May 30. L. 98: (1.5) added and (2) to (4) amended, p. 1373, § 1, effective June 2. L. 2000: (2) and (3) amended and (5), (6), (7), (8), and (9) added, p. 675, § 1, effective May 23. L. 2010: (1.5), (5), (6), (7), (8), and (9) repealed and (2) and (3) amended, (SB 10-212), ch. 412, pp. 2032, 2035, §§ 1, 8, effective July 1.

39-22-120. Legislative declaration - state sales tax refund - offset against state income tax. (1) The general assembly hereby finds and declares that:

(a) Section 20 of article X of the state constitution, which was approved by the registered electors of this state in 1992, limits the annual growth of state fiscal year spending;

(b) During the 1997-98 fiscal year, state revenues from sources not excluded from state fiscal year spending exceeded the limitation on state fiscal year spending;

(c) When revenues exceed the state fiscal year spending limitation for any given fiscal year, section 20 (7) (d) of article X of the state constitution requires that the excess revenues be refunded in the next fiscal year unless voters approve a revenue change allowing the state to keep the revenues;

(d) In addition, section 20 (1) of article X of the state constitution states that refunds need not be proportional when prior payments are impractical to identify or return and authorizes the use of any reasonable method for refunding excess revenues;

(e) The state is required to refund during the 1998-99 fiscal year all revenues in excess of the state fiscal year spending limitation for the 1997-98 fiscal year; except that, if at the 1998 general election voters statewide approve House Bill 98-1256, enacted at the second regular session of the sixty-first general assembly, the state is required to refund only that portion of the state excess revenues for the 1997-98 fiscal year that the voters have not authorized the state to retain;

(f) It is within the legislative prerogative of the general assembly to enact legislation to implement the refund of state excess revenues for the 1997-98 fiscal year in compliance with section 20 of article X of the state constitution;

(g) It is a reasonable and necessary exercise of the legislative prerogative to determine that, due to the impossibility of identifying or returning prior payments, it is not feasible to make proportional refunds of state excess revenues;

(h) It is also a reasonable and necessary exercise of the legislative prerogative to determine what constitutes a reasonable method of refunding state excess revenues after consideration of the best information available at the time regarding: The amount and source of excess revenues to be refunded; the qualifications for and number of eligible recipients; the amount of refund each recipient should receive; the necessary procedures to claim and make refunds; and the related administrative expenses;

(i) It is the considered judgment of the general assembly that:

(I) The state excess revenues for the 1997-98 fiscal year are derived from a wide variety of state taxes and fees ranging from state sales tax to severance and transportation taxes to health service fees to court fines to permit and license fees and to higher education fees and should, therefore, be returned to as large a group of Colorado residents as is identifiable and economically feasible;

(II) It is not feasible to make proportional refunds of state excess revenues for the 1997-98 fiscal year due to the impossibility of identifying or returning prior payments;

(III) It is reasonable and fair to refund state excess revenues for the 1997-98 fiscal year to a large group of individuals as a refund of state sales tax revenues since more Coloradans pay state sales tax than any other state tax;

(IV) The state collected over one billion four hundred fourteen million dollars in state sales tax revenues during the 1997-98 fiscal year from which the refund of state excess revenues may be made;

(V) Refunding state excess revenues for the 1997-98 fiscal year through the state income tax system in the manner set forth in this section is a reasonable method for refunding such excess revenues; and

(VI) The most cost-effective and expeditious method of refunding state excess revenues for the 1997-98 fiscal year is through the state income tax system but that a refund offset against state income tax liability is merely a mechanism for refunding said state excess revenues to a broad spectrum of persons.

(2) (a) As used in this section, "qualified individual" means:

(I) A natural person who is domiciled in this state for the entire taxable year commencing on January 1, 1998, and ending December 31, 1998, and who is required to file a Colorado individual income tax return for that tax year pursuant to section 39-22-601 (1) (a) or who files a Colorado individual income tax return to claim a refund of Colorado income tax withheld from wages for that tax year; or

(II) Any natural person who is domiciled in this state for the entire taxable year commencing on January 1, 1998, and ending December 31, 1998, and who is at least eighteen years of age as of December 31, 1997; or

(III) A natural person who died during the taxable year commencing on January 1, 1998, and ending December 31, 1998, who was domiciled in this state from January 1, 1998, until the date of death, and whose estate or spouse is required to file a Colorado individual income tax return for that tax year pursuant to section 39-22-601 (1) (a) or whose estate or spouse files a Colorado income tax return to claim a refund of Colorado income tax withheld from wages for that tax year; or

(IV) A natural person who died during the taxable year commencing on January 1, 1998, and ending December 31, 1998, who was domiciled in this state from January 1, 1998, until the date of death, and who was at least eighteen years of age as of December 31, 1997.

(b) "Qualified individual" does not include:

(I) Any natural person who was convicted of a felony and who served a sentence of incarceration in a correctional facility operated by or under contract with the department of corrections or in a county or municipal jail awaiting transfer to the department of corrections pursuant to section 16-11-308, C.R.S., or in both such facility and jail for a total of one hundred eighty days or more during the 1997-98 fiscal year, regardless of whether such person meets the qualifications set forth in paragraph (a) of this subsection (2);

(II) Any natural person who is convicted of a misdemeanor or is adjudicated for an offense that would constitute a misdemeanor if committed by an adult and who is incarcerated in a county or municipal jail for a total of one hundred eighty days or more during the 1997-98 fiscal year, regardless of whether such person meets the qualifications set forth in paragraph (a) of this subsection (2);

(III) Any person under eighteen years of age who is adjudicated for an offense that would constitute a felony if committed by an adult and who was committed to the department of human services for a total of one hundred eighty days or more during the 1997-98 fiscal year, regardless of whether such person meets the qualifications set forth in paragraph (a) of this subsection (2).

(3) With respect to the taxable year commencing on January 1, 1998, and ending December 31, 1998, there shall be allowed to each qualified individual a state sales tax refund in an amount specified in subsection (4) of this section with respect to the income taxes imposed by this article.

(4) The amount of the refund allowed under this section shall be as follows:

(a) For a qualified individual filing a single return for the 1998 tax year:

(I) If the qualified individual's federal adjusted gross income for the 1998 tax year is less than or equal to twenty thousand dollars, the refund shall be in the amount of one

hundred forty-two dollars, unless, at the 1998 general election, voters statewide approve House Bill 98-1256, enacted at the second regular session of the sixty-first general assembly, in which case the refund shall be in the amount of ninety-two dollars;

(II) If the qualified individual's federal adjusted gross income for the 1998 tax year is greater than twenty thousand dollars but not more than fifty thousand dollars, the refund shall be in the amount of one hundred ninety-five dollars, unless, at the 1998 general election, voters statewide approve House Bill 98-1256, enacted at the second regular session of the sixty-first general assembly, in which case the refund shall be in the amount of one hundred twenty-six dollars;

(III) If the qualified individual's federal adjusted gross income for the 1998 tax year is greater than fifty thousand dollars but not more than ninety-five thousand dollars, the refund shall be in the amount of two hundred seventy-six dollars, unless, at the 1998 general election, voters statewide approve House Bill 98-1256, enacted at the second regular session of the sixty-first general assembly, in which case the refund shall be in the amount of one hundred seventy-eight dollars;

(IV) If the qualified individual's federal adjusted gross income for the 1998 tax year is greater than ninety-five thousand dollars, the refund shall be in the amount of three hundred eighty-four dollars, unless, at the 1998 general election, voters statewide approve House Bill 98-1256, enacted at the second regular session of the sixty-first general assembly, in which case the refund shall be in the amount of two hundred forty-eight dollars;

(b) For two qualified individuals filing a joint return for the 1998 tax year:

(I) If the qualified individuals' aggregate federal adjusted gross income for the 1998 tax year is less than or equal to twenty thousand dollars, the refund shall be in the amount of two hundred eighty-four dollars, unless, at the 1998 general election, voters statewide approve House Bill 98-1256, enacted at the second regular session of the sixty-first general assembly, in which case the refund shall be in the amount of one hundred eighty-four dollars;

(II) If the qualified individuals' aggregate federal adjusted gross income for the 1998 tax year is greater than twenty thousand dollars but not more than fifty thousand dollars, the refund shall be in the amount of three hundred ninety dollars, unless, at the 1998 general election, voters statewide approve House Bill 98-1256, enacted at the second regular session of the sixty-first general assembly, in which case the refund shall be in the amount of two hundred fifty-two dollars;

(III) If the qualified individuals' aggregate federal adjusted gross income for the 1998 tax year is greater than fifty thousand dollars but not more than ninety-five thousand dollars, the refund shall be in the amount of five hundred fifty-two dollars, unless, at the 1998 general election, voters statewide approve House Bill 98-1256, enacted at the second regular session of the sixty-first general assembly, in which case the refund shall be in the amount of three hundred fifty-six dollars;

(IV) If the qualified individuals' aggregate federal adjusted gross income for the 1998 tax year is greater than ninety-five thousand dollars, the refund shall be in the amount of seven hundred sixty-eight dollars, unless, at the 1998 general election, voters statewide approve House Bill 98-1256, enacted at the second regular session of the sixty-first general assembly, in which case the refund shall be in the amount of four hundred ninety-six dollars.

(5) (a) (I) Except as otherwise provided in subparagraph (II) of this paragraph (a), any refund allowed pursuant to this section shall be claimed by a qualified individual as defined in subparagraph (I) or (III) of paragraph (a) of subsection (2) of this section by filing a 1998 income tax return with the department of revenue no later than April 15, 1999.

(II) Any refund allowed pursuant to this section shall be claimed by a qualified individual as defined in subparagraph (I) or (III) of paragraph (a) of subsection (2) of this section who is granted an extension of time to file a 1998 income tax return by filing a 1998 income tax return with the department of revenue no later than October 15, 1999. Such qualified individual shall not be required to pay all or any portion of the qualified individual's net tax liability due prior to October 15, 1999, in order to be granted an extension of time to file said tax return; except that, pursuant to section 39-22-621, such qualified individual may be subject to a late payment penalty and interest on any net income tax liability not paid by April 15, 1999.

(III) The department of revenue shall not allow said refund claimed on any 1998 income tax return not filed in compliance with the provisions of this article. In no event shall the refund claimed by a qualified individual as defined in subparagraph (I) or (III) of paragraph (a) of subsection (2) of this section on any 1998 income tax return be:

(A) Disallowed if said return is filed on or before October 15, 1999; and

(B) Allowed if said return is filed after October 15, 1999.

(b) Any refund allowed pursuant to this section shall be claimed by a qualified individual as defined in subparagraph (II) or (IV) of paragraph (a) of subsection (2) of this section by filing a 1998 income tax return with the department of revenue no later than April 15, 1999. The department of revenue shall not allow said refund claimed by a qualified individual as defined in subparagraph (II) or (IV) of paragraph (a) of subsection (2) of this section on any 1998 income tax return filed with the department of revenue after April 15, 1999.

(c) (I) Notwithstanding any provision of paragraph (b) of this subsection (5) to the contrary, a qualified individual as defined in subparagraph (II) or (IV) of paragraph (a) of subsection (2) of this section who claims a property tax assistance grant pursuant to section 39-31-101 or a heat or fuel expenses assistance grant pursuant to section 39-31-104 may claim a refund authorized by this section on the assistance grant application form described in section 39-31-102 (2). Claiming a refund on such assistance grant application form shall be in lieu of claiming the refund on an income tax return pursuant to paragraph (b) of this subsection (5). Any refund claimed pursuant to this paragraph (c) shall be claimed on or before April 15, 1999.

(II) The department of revenue shall not allow a refund authorized by this section that is claimed on an assistance grant application form if:

(A) The assistance grant application form is filed after April 15, 1999; or

(B) The qualified individual has claimed the refund authorized by this section on an income tax form filed in accordance with paragraph (b) of this subsection (5) for the tax year for which the refund is allowed.

(5.5) (a) The department of revenue shall make a state sales tax refund of excess revenues for the 1996-97 fiscal year to any qualified individual, as defined in paragraph (a) of subsection (2) of this section as said section existed for purposes of refunding excess revenues for the 1996-97 fiscal year and prior to the amendments to said section contained in House Bill 98S-1003, enacted at the second extraordinary session of the sixty-first general assembly, who, pursuant to a rule of the department of revenue, was not allowed such state sales tax refund because of the failure to pay all or any portion of such qualified individual's net tax liability due prior to a certain date.

(b) The department of revenue shall notify each qualified individual described in paragraph (a) of this subsection (5.5) of the allowance of such refund and make payment of such refunds to such qualified individuals no later than September 30, 1999.

(c) The amount of any state sales tax refund made pursuant to this subsection (5.5) that is outstanding for more than six months after the date such refund was issued to the taxpayer by the department of revenue shall be added to and refunded with the state excess revenues pursuant to section 24-77-103.8, C.R.S.

(6) If the refund allowed under this section exceeds the income taxes otherwise due on the claimant's income, the amount of the refund not used as an offset against income taxes may not be carried forward as an offset against subsequent years' income tax liability and shall be refunded to the claimant.

(7) In addition to any other penalties allowed by law, any person who claims but is not eligible to claim the refund allowed pursuant to this section shall be subject to the criminal penalties imposed pursuant to section 39-21-118, as applicable.

(8) The state sales tax refund allowed to any qualified individual under this section shall not be reported by the department of revenue as a payment of a refund, credit, or offset of state income taxes to such qualified individual in any information return required to be filed pursuant to federal law.

(9) The executive director shall not print individual income tax forms for the 1998 taxable year until the results of the 1998 general election are known so that forms will

reflect the impact of the results of said election on the amount of the refund to be allowed in accordance with subsection (4) of this section.

(10) The department of revenue shall identify any qualified individual who has been convicted of a felony and who, at the time of filing for a refund pursuant to this section, is incarcerated in a correctional facility operated by or under contract with the department of corrections or in a county or municipal jail awaiting transfer to a correctional facility pursuant to section 16-11-308, C.R.S. The department of revenue shall transfer the amount of any refund owed to said qualified individual to the department of corrections. The department of corrections shall transmit the amount of said refund to the clerk of the district court which issued an order for payment of restitution or an order for costs pursuant to section 18-1.3-701, C.R.S. Such refund shall be credited in the priority specified in section 16-11-101.6 (1), C.R.S.

(11) The department of corrections, the department of human services, and each county of the state, to the extent each such county has the capability within existing resources, shall provide in a timely manner the information requested by the department of revenue necessary to identify the persons specified in paragraph (b) of subsection (2) of this section and in subsection (10) of this section. The information shall be provided in the form requested by the department of revenue. The department of revenue shall maintain the confidentiality of any social security number received pursuant to this subsection (11).

Source: L. 97, 1st Ex. Sess.: Entire section added, p. 1, § 1, effective October 22. L. 98, 2nd Ex. Sess.: (1)(b), (1)(e), (1)(f), (1)(e), and (2) to (7) amended and (8) to (11) added, p. 1, § 1, effective September 16. L. 99: (5.5) added, p. 1364, § 1, effective June 3. L. 2002: (10) amended, p. 1557, § 350, effective October 1. L. 2004: (10) amended, p. 1209, § 89, effective August 4. L. 2007: (5.5)(c) amended, p. 2049, § 95, effective June 1.

Editor's note: This section was enacted at the first extraordinary session of the sixty-first general assembly in 1997 to provide a method of refunding revenues in excess of the state fiscal year spending limitation for the 1996-97 state fiscal year as required by section 20 of article X of the state constitution (TABOR). It establishes a one-time sales tax refund credit against state individual income tax to qualified individuals.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (10), see section 1 of chapter 318, Session Laws of Colorado 2002.

ANNOTATION

Limitation of the sales tax refund to full-year Colorado residents did not violate the privileges and immunities clause, the equal

protection clause, or the commerce clause of the U.S. Constitution. Thorpe v. State, 107 P.3d 1064 (Colo. App. 2004).

39-22-120.5. Unrefunded excess revenues. (Repealed)

Source: L. 99: Entire section added, p. 1365, § 2, effective June 3. L. 2005: Entire section repealed, p. 133, § 4, effective April 5.

39-22-121. Credit for child care facilities - repeal. (1) For the income tax year commencing on or after January 1, 1999, but prior to January 1, 2000, any taxpayer who makes a monetary or in-kind contribution to promote child care in the state shall be allowed a credit against the income tax imposed by this article in an amount equal to twenty-five percent of the total value of the contribution except as otherwise provided in subsection (5) of this section.

(1.5) For income tax years commencing on or after January 1, 2000, any taxpayer who makes a monetary contribution to promote child care in the state shall be allowed a credit against the income tax imposed by this article in an amount equal to fifty percent of the total value of the contribution except as otherwise provided in subsections (5) and (6.7) of this section.

(1.7) As used in this section, unless the context otherwise requires, “child care” means care provided to a child twelve years of age or younger.

(2) Monetary or in-kind contributions to promote child care in the state shall include the following types of contributions:

(a) Donating money, real estate, or property for the establishment or operation of a child care facility that uses the donation to provide child care, a child care program that is not a child care facility but provides child care services similar to those provided by a child care center, as defined in section 26-6-102 (1.5), C.R.S., or any other program that received donations for which a credit was allowed to the donor pursuant to this section for any income tax year that ended before January 1, 2004, in the state;

(b) Donating money to establish a grant or loan program for a parent or parents in the state requiring financial assistance for child care;

(c) Pooling moneys of several businesses and donating such moneys for the establishment of a child care facility in the state;

(d) Donating money for the training of child care providers in the state; and

(e) Donating money, services, or equipment for the establishment of an information dissemination program in the state to provide information and referral services to assist a parent or parents in obtaining child care.

(3) In no event shall credits be allowed pursuant to this section for contributions that are not directly related to promoting child care in the state or for contributions that a taxpayer makes to a child care facility in which the taxpayer or a person related to the taxpayer has a financial interest.

(4) When a contribution for which a credit is claimed pursuant to this section is made to a for-profit business, such contribution shall be directly invested by the business for the acquisition or improvement of facilities, equipment, or services, including the improvement of staff salaries, staff training, or the quality of child care.

(5) The credit allowed by this section shall not exceed one hundred thousand dollars or the taxpayer’s actual income tax liability for the tax year for which the credit is claimed, whichever is less. In-kind contributions shall not exceed fifty percent of the total amount of the credit claimed for a given tax year.

(6) If the amount of the credit allowed pursuant to the provisions of this section exceeds the amount of income taxes otherwise due on the taxpayer’s income in the income tax year for which the credit is being claimed, the amount of the credit not used as an offset against income taxes in said income tax year may be carried forward and used as a credit against subsequent years’ income tax liability for a period not to exceed five years and shall be applied first to the earliest income tax years possible. Any credit remaining after said period shall not be refunded or credited to the taxpayer.

(6.5) For the purposes of this section, “child care facility” means:

(a) Any facility required to be licensed pursuant to part 1 of article 6 of title 26, C.R.S., and shall include, but is not limited to:

(I) Child care centers;

(II) Child placement agencies;

(III) Family child care homes;

(IV) Foster care homes;

(V) Homeless youth shelters;

(VI) Residential child care facilities; and

(VII) Secure residential treatment centers; and .

(b) For income tax years commencing on and after January 1, 2013, any approved facility school as such term is defined in section 22-2-402 (1), C.R.S., that is also affiliated with a licensed or certified hospital in the state and is also a nonprofit organization; except that, subject to the limitations specified in subsections (5) and (6) of this section and paragraph (d) of subsection (6.7) of this section, any credit for a monetary contribution made to an approved facility school in the income tax year commencing on or after January 1, 2013, but before January 1, 2014, shall not be claimed until the income tax year commencing on or after January 1, 2014.

(6.7) (a) If the revenue estimate prepared by the staff of the legislative council in December 2010 and December 2011 indicates that the amount of the total general fund

revenues for that particular fiscal year will not be sufficient to grow the total state general fund appropriations by six percent over such appropriations for the previous fiscal year, then the credit authorized in this section shall not be allowed for any income tax year commencing during the calendar year following the year in which the estimate is prepared; except that any taxpayer who would have been eligible to claim a credit pursuant to this section in the income tax year in which the credit is not allowed shall be allowed to claim the credit earned in such income tax year in the next income tax year in which the estimate indicates that the amount of the total general fund revenues will be sufficient to grow the total state general fund appropriations by six percent over such appropriations for the previous fiscal year.

(b) The department of revenue shall, through its web site, specify on or before January 1, 2011, and January 1, 2012, whether the credit authorized in this section shall be allowed for a given income tax year pursuant to paragraph (a) of this subsection (6.7).

(c) Notwithstanding any other provision, and subject to the limitations in subsections (5) and (6) of this section, in the income tax year commencing on January 1, 2013, a taxpayer may claim no more than fifty percent of any credit allowed pursuant to subsection (1.5) of this section and paragraph (a) of this subsection (6.7) and any credit carried forward pursuant to subsection (6) of this section. The remainder of all credits allowed as described in this paragraph (c) shall be carried forward to the income tax year commencing January 1, 2014.

(d) Notwithstanding any other provision, and subject to the limitations in subsections (5) and (6) of this section, in the income tax year commencing on January 1, 2014, a taxpayer may claim no more than seventy-five percent of any credit allowed pursuant to subsection (1.5) of this section and any credit carried forward pursuant to subsection (6) of this section and paragraph (c) of this subsection (6.7). The remainder of all credits allowed as described in this paragraph (d) shall be carried forward to the income tax year commencing January 1, 2015.

(7) This section is repealed, effective January 1, 2020.

Source: **L. 98:** Entire section added, p. 1370, § 1, effective August 5. **L. 2000:** (1) amended and (1.5) added, p. 678, § 2, effective May 23. **L. 2004:** (1.7) added and (2)(a) and (7) amended, p. 84, § 1, effective March 9. **L. 2008:** (2)(a) and (7) amended and (6.5) and (6.7) added, p. 2269, § 1, effective August 5. **L. 2009:** (6.7)(a) amended, (SB 09-228), ch. 410, p. 2265, § 18, effective July 1. **L. 2011:** (1.5) and (6.7) amended, (HB 11-1014), ch. 247, p. 1080, § 1, effective August 10. **L. 2012:** (6.5) amended, (HB 12-1273), ch. 270, p. 1424, § 2, effective August 8.

Cross references: For the legislative declaration in the 2012 act amending subsection (6.5), see section 1 of chapter 270, Session Laws of Colorado 2012.

39-22-122. Long-term care insurance credit. (1) Any resident individual who incurs an expense in purchasing or making a payment upon a policy of long-term care insurance for the individual or the individual's spouse shall be allowed a credit against the income taxes due on the individual's income under this article. The credit shall be an amount equal to twenty-five percent of the amount expended for such insurance during the taxable year for which the credit is claimed. For the purposes of this section, "long-term care insurance" shall have the same meaning as in section 10-19-103 (5), C.R.S.

(2) Notwithstanding any other provision of this section to the contrary, a credit shall only be allowed to:

(a) An individual filing a single return with a federal taxable income of less than fifty thousand dollars for the tax year for which the credit is claimed;

(b) Two individuals filing a joint return with a federal taxable income of less than fifty thousand dollars for the tax year for which the credit is claimed if claiming the credit for one policy; or

(c) Two individuals filing a joint return with a federal taxable income of less than one hundred thousand dollars for the tax year for which the credit is claimed if claiming the credit for two policies or for a joint policy that covers each individual separately.

(3) Notwithstanding any other provision of this section to the contrary, the amount of credit claimed pursuant to this section shall not exceed one hundred fifty dollars for each policy for which a credit is claimed pursuant to this section.

(4) If the credit allowed under subsection (1) of this section exceeds the income taxes due on the resident individual's income, the amount of the credit not used to offset income taxes shall not be carried forward as tax credits against the resident individual's subsequent years' income tax liability and shall not be refunded to the individual.

(5) Any credit allowed pursuant to the provisions of this section shall be published in rules promulgated by the executive director of the department of revenue in accordance with article 4 of title 24, C.R.S., and shall be included in income tax forms for that taxable year.

Source: L. 99: Entire section added, p. 1362, § 1, effective August 4. L. 2001: (2)(c) amended, p. 393, § 3, effective August 8.

Cross references: For the legislative declaration contained in the 2001 act amending subsection (2)(c), see section 1 of chapter 133, Session Laws of Colorado 2001.

39-22-123. Earned income tax credit - refund of state excess revenues for fiscal years commencing on or after July 1, 1998.

(1) (a) Repealed.

(b) Subject to the provisions of subsection (4) of this section, for any income tax year commencing on or after January 1, 2000, if, based on the financial report prepared by the controller in accordance with section 24-77-106.5, C.R.S., the controller certifies that the amount of state revenues for the state fiscal year ending in that income tax year exceeds the limitation on state fiscal year spending imposed by section 20 (7) (a) of article X of the state constitution and the voters statewide either have not authorized the state to retain and spend all of the excess state revenues or have authorized the state to retain and spend only a portion of the excess state revenues for that fiscal year, a resident individual or part-year resident individual who claims an earned income tax credit on the individual's federal tax return shall be allowed an earned income tax credit against the taxes due on the individual's income under this article. The amount of the credit shall be an amount equal to ten percent of the amount of the federal credit claimed on the resident individual's federal tax return or, in the case of a part-year resident individual, such amount as shall reflect ten percent of the federal earned income credit earned while a resident of Colorado.

(2) If the credit allowed under subsection (1) of this section exceeds the income taxes due on the resident individual's income, the amount of the credit not used to offset income taxes shall not be carried forward as tax credits against the resident individual's subsequent years' income tax liability and shall be refunded to the individual.

(3) Any earned income tax credit allowed for any given taxable year pursuant to this section shall be published in rules promulgated by the executive director of the department of revenue in accordance with article 4 of title 24, C.R.S., and shall be included in income tax forms for that taxable year.

(3.5) Any earned income tax credit allowed to any person pursuant to subsection (1) of this section shall not be considered as income or resources for the purpose of determining eligibility or for the payment of public assistance benefits and medical assistance benefits authorized under state law or for payments made under any other publicly funded programs.

(4) (a) If, based on the financial report prepared by the controller in accordance with section 24-77-106.5, C.R.S., the controller certifies that the amount of state revenues for the state fiscal year commencing on July 1, 1998, exceeds the limitation on state fiscal year spending imposed by section 20 (7) (a) of article X of the state constitution for that fiscal year by less than fifty million dollars, then the credit authorized by subsection (1) of this section shall not be allowed for the income tax year commencing on January 1, 1999.

(b) If, based on the financial report prepared by the controller in accordance with section 24-77-106.5, C.R.S., the controller certifies that the amount of state revenues for any state fiscal year commencing on or after July 1, 1999, exceeds the limitation on state fiscal year spending imposed by section 20 (7) (a) of article X of the state constitution for that

fiscal year by less than fifty million dollars, as adjusted pursuant to paragraph (c) of this subsection (4), then the credit authorized by subsection (1) of this section shall not be allowed for the income tax year in which said state fiscal year ended.

(c) (I) No later than October 1 of any given calendar year commencing on or after January 1, 2000, the executive director of the department of revenue shall annually adjust the dollar amount specified in paragraph (b) of this subsection (4) to reflect the rate of growth of Colorado personal income for the calendar year immediately preceding the calendar year in which such adjustment is made. For purposes of this subparagraph (I), "the rate of growth of Colorado personal income" means the percentage change between the most recent published annual estimate of total personal income for Colorado, as defined and officially reported by the bureau of economic analysis in the United States department of commerce for the calendar year immediately preceding the calendar year in which the adjustment is made and the most recent published annual estimate of total personal income for Colorado, as defined and officially reported by the bureau of economic analysis in the United States department of commerce for the calendar year prior to the calendar year immediately preceding the calendar year in which the adjustment is made.

(II) Upon calculating the adjustment of said dollar amount in accordance with subparagraph (I) of this paragraph (c), the executive director shall notify in writing the executive committee of the legislative council created pursuant to section 2-3-301 (1), C.R.S., of the adjusted dollar amount and the basis for the adjustment. Such written notification shall be given within five working days after such calculation is completed, but such written notification shall be given no later than October 1 of the calendar year.

(III) It is the function of the executive committee to review and approve or disapprove such adjustment of said dollar amount within twenty days after receipt of such written notification from the executive director. Any adjustment that is not approved or disapproved by the executive committee within said twenty days shall be automatically approved; except that, if within said twenty days the executive committee schedules a hearing on such adjustment, such automatic approval shall not occur unless the executive committee does not approve or disapprove such adjustment after the conclusion of such hearing. Any hearing conducted by the executive committee pursuant to this subparagraph (III) shall be concluded no later than twenty-five days after receipt of such written notification from the executive director.

(IV) (A) If the executive committee disapproves any adjustment of said dollar amount calculated by the executive director pursuant to this paragraph (c), the executive committee shall specify such adjusted dollar amount to be utilized by the executive director. Any adjusted dollar amount specified by the executive committee pursuant to this sub-subparagraph (A) shall be calculated in accordance with the provisions of this paragraph (c).

(B) For the purpose of determining whether the credit authorized by subsection (1) of this section is to be allowed for any given income tax year, the executive director shall not utilize any adjusted dollar amount that has not been approved pursuant to subparagraph (III) of this paragraph (c) or otherwise specified pursuant to sub-subparagraph (A) of this subparagraph (IV).

(V) If one or more ballot questions are submitted to the voters at a statewide election to be held in November of any calendar year commencing on or after January 1, 1999, that seek authorization for the state to retain and spend all or any portion of the amount of excess state revenues for the state fiscal year ending during said calendar year, the executive director shall not determine whether the credit authorized by subsection (1) of this section shall be allowed and shall not promulgate rules containing said credit until the impact of the results of said election on the amount of the excess state revenues to be refunded is ascertained.

(5) The general assembly finds and declares that an earned income tax credit is a reasonable method of refunding a portion of the state excess revenues required to be refunded in accordance with section 20 (7) (d) of article X of the state constitution.

Source: **L. 99:** Entire section added, p. 1327, § 1, effective June 3. **L. 2000:** (1) amended and (3.5) added, p. 1407, § 1, effective August 2.

Editor's note: Subsection (1)(a)(II) provided for the repeal of subsection (1)(a), effective January 1, 2005. (See L. 2000, p. 1407.)

39-22-124. Tax credit against state taxes - legislative declaration - hearings and appeals. (Repealed)

Source: **L. 99:** Entire section added, p. 1289, § 1, effective August 4. **L. 2000:** (2)(b), (3), (4), (5), (8)(a), (8)(b), (8)(c)(I), and (8)(c)(II) amended and (5.5) and (6.5) added, p. 744, § 1, effective May 23. **L. 2001:** (3), IP(4), (4)(b), IP(5), IP(5)(a), (5)(b), and (8)(c)(I) amended and (4.5) and (10) added, p. 429, § 1, effective April 20. **L. 2010:** Entire section repealed, (SB 10-212), ch. 412, p. 2032, § 1, effective July 1.

39-22-125. Credit for health benefit plans - definitions - mechanism to refund excess state revenues. (Repealed)

Source: **L. 2000:** Entire section added, p. 930, § 1, effective May 25. **L. 2010:** Entire section repealed, (SB 10-212), ch. 412, p. 2032, § 1, effective July 1.

39-22-126. Credit for health care professionals practicing in rural health care professional shortage areas - legislative declaration - definitions. (Repealed)

Source: **L. 2000:** Entire section added, p. 738, § 1, effective August 2. **L. 2001:** (2)(a) amended, p. 186, § 19, effective August 8; (2)(a), (2)(b)(I), (3), (4)(a), (4)(d), (6), (7), (9), and (10)(a) amended, p. 649, § 1, effective August 8; (4)(a), (4)(d), (6), (7), and (10)(a) amended, p. 393, § 4, effective August 8. **L. 2010:** Entire section repealed, (SB 10-212), ch. 412, p. 2032, § 1, effective July 1.

39-22-127. Credit for providing foster care - refund of excess state revenues for fiscal years commencing on or after January 1, 2000 - legislative declaration. (Repealed)

Source: **L. 2001:** Entire section added, p. 608, § 1, effective May 30. **L. 2010:** Entire section repealed, (SB 10-212), ch. 412, p. 2032, § 1, effective July 1.

39-22-128. Credit for income eligible to be deferred on sale of livestock due to weather-related conditions - repeal. (Repealed)

Source: **L. 2002, 3rd Ex. Sess.:** Entire section added, p. 56, § 1, effective August 12.

Editor's note: Subsection (4) provided for the repeal of this section, effective January 1, 2009. (See L. 2002, 3rd Ex. Sess., p. 56.)

PART 2

PARTNERS AND PARTNERSHIPS

39-22-201. Partners, not partnership, subject to tax. A partnership as such shall not be subject to tax under this article. Persons carrying on business as partners shall be liable for the tax and the alternative minimum tax under this article only in their separate or individual capacities.

Source: **L. 64:** R&RE, p. 766, § 1. **C.R.S. 1963:** § 138-1-25. **L. 67:** p. 849, § 1. **L. 87:** Entire section amended, p. 1437, § 3, effective June 22.

39-22-201.5. Limited liability company members - subject to tax. (Repealed)

Source: **L. 90:** Entire section added, p. 453, § 34, effective April 18. **L. 95:** Entire section repealed, p. 817, § 41, effective May 24.

39-22-202. Resident partners. (1) In determining the federal taxable income of a resident partner for Colorado income tax purposes, any modification described in section 39-22-104 which relates to an item of partnership income, gain, loss, or deduction shall be made in accordance with the partner's distributive share, for federal income tax purposes, of the item to which the modification relates. Where a partner's distributive share of any such item is not required to be taken into account separately for federal income tax purposes, the partner's distributive share of such item shall be determined in accordance with his distributive share, for federal income tax purposes, of partnership taxable income or loss generally.

(2) Each item of partnership income, gain, loss, deduction, or credit shall have the same character for a partner under this article as for federal income tax purposes.

(3) Where a partner's distributive share of an item of partnership income, gain, loss, deduction, or credit is determined for federal income tax purposes by special provision of the partnership agreement with respect to such item and where the principal purpose of such provision is the avoidance or evasion of tax under this article, the partner's distributive share of such item and any modification required with respect thereto shall be determined as if the partnership agreement made no special provision with respect to such item.

Source: **L. 64:** R&RE, p. 766, § 1. **C.R.S. 1963:** § 138-1-26. **L. 87:** (1) amended, p. 1437, § 4, effective June 22.

39-22-202.5. Resident members. (Repealed)

Source: **L. 90:** Entire section added, p. 453, § 34, effective April 18. **L. 95:** Entire section repealed, p. 817, § 42, effective May 24.

39-22-203. Nonresident partners. (1) (a) In determining Colorado nonresident federal taxable income of a nonresident partner of any partnership, there shall be included only the portion of such partner's distributive share of items of partnership income, gain, loss, deduction, or credit derived from sources within Colorado determined in accordance with the provisions of section 39-22-109 or, at the partnership's election, apportioned or allocated to this state pursuant to section 39-22-303.5.

(b) Repealed.

(2) In determining the sources of a nonresident partner's income for the purposes of Colorado income tax, no effect shall be given to a provision in the partnership agreement which:

(a) Characterizes payments to the partner as being for services or for the use of capital; or

(b) Allocates to the partner, as income or gain from sources outside Colorado, a greater portion of his distributive share of partnership income or gain than the ratio of partnership income or gain from sources outside Colorado to partnership income or gain from all sources, except as authorized in subsection (4) of this section; or

(c) Allocates to the partner a greater proportion of a partnership item of loss or deduction connected with sources within Colorado than his proportionate share, for federal income tax purposes, of partnership loss or deduction generally, except as authorized in subsection (4) of this section.

(3) Repealed.

(4) The executive director may authorize the use of such other methods of determining a nonresident partner's portion of partnership items derived from or connected with sources within Colorado, and the modifications related thereto, as may be appropriate and equitable, on such terms and conditions as he may require.

(5) (a) A nonresident partner's distributive share of items shall be determined under section 39-22-202 (1).

(b) The character of partnership items for a nonresident partner shall be determined under section 39-22-202 (2).

(c) The effect of a special provision in a partnership agreement having the principal purpose of avoidance or evasion of tax under this article shall be determined under section 39-22-202 (3).

Source: L. 64: R&RE, p. 767, § 1. C.R.S. 1963: § 138-1-27. L. 83: (1)(b) amended, p. 1513, § 5, effective January 1, 1984. L. 87: (1)(a), IP(2), and (2)(c) amended and (1)(b) and (3) repealed, pp. 1437, 1457, §§ 5, 31, effective June 22. L. 93: (1)(a) amended, p. 1319, § 1, effective June 6. L. 2008: (1)(a) amended, p. 954, § 6, effective January 1, 2009.

39-22-203.5. Nonresident members. (Repealed)

Source: L. 90: Entire section added, p. 454, § 34, effective April 18. L. 93: (1) amended, p. 1319, § 2, effective June 6. L. 95: Entire section repealed, p. 818, § 46, effective May 24.

39-22-204. Accounting periods and methods. The provisions of section 39-22-111 shall apply to partnerships to the extent not inconsistent with sections 39-22-201 to 39-22-203.

Source: L. 64: R&RE, p. 768, § 1. C.R.S. 1963: § 138-1-28. L. 87: Entire section amended, p. 1438, § 6, effective June 22.

39-22-204.5. Accounting periods and methods - limited liability companies. (Repealed)

Source: L. 90: Entire section added, p. 454, § 34, effective April 18. L. 95: Entire section repealed, p. 817, § 43, effective May 24.

39-22-205. Limited liability company members. (Repealed)

Source: L. 90: Entire section added, p. 455, § 34, effective April 18. L. 95: Entire section repealed, p. 817, § 44, effective May 24.

39-22-206. Foreign source income of export taxpayers. If a partnership qualifies as an export taxpayer, its partners may exclude from gross income for Colorado income tax purposes such partners' distributive share of any such partnership income or gain which constitutes foreign source income for federal income tax purposes. For the purposes of this section, an "export taxpayer" means any partnership which is subject to the provisions of this article and which sells fifty percent or more of its product or products which are produced in Colorado in states other than Colorado or in foreign countries or, if the gross receipts of such partnership are derived from the performance of services, such services are performed in Colorado by a partner or employee of the partnership and fifty percent or more of such services provided by the partnership are sold or provided to persons outside of Colorado.

Source: L. 93: Entire section added, p. 1320, § 3, effective June 6. L. 95: Entire section amended, p. 818, § 45, effective May 24.

PART 3

CORPORATIONS

SUBPART 1

C CORPORATIONS

39-22-300.1. Short title - citation. This subpart 1 shall be comprised of sections 39-22-300.1 to 39-22-310 and may be cited as subpart 1. This subpart 1 shall be known and may be cited as the "Colorado C Corporation Income Tax Act".

Source: L. 92: Entire section added, p. 2266, § 6, effective April 16.

ANNOTATION

Law reviews. For article, "Choice of Entities in Colorado", see 23 Colo. Law. 293 (1994).

39-22-301. Corporate tax imposed. (1) (a) For income tax years commencing on or after January 1, 1983, but before July 1, 1986, a tax is imposed upon each domestic C corporation and foreign C corporation doing business in Colorado annually in an amount equal to five percent of the net income of such C corporation during the year derived from sources within Colorado. Income from sources within Colorado includes income from tangible or intangible property located or having a situs in this state and income from any activities carried on in this state, regardless of whether carried on in intrastate, interstate, or foreign commerce.

(b) For income tax years commencing on or after January 1, 1981, but before January 1, 1983, a tax is imposed upon each domestic C corporation and foreign C corporation doing business in Colorado annually in an amount equal to five percent of the net income of such C corporation during the year derived from sources within Colorado reduced pursuant to the reduction tables set forth in subsections (1.1) and (1.2) of this section. Income from sources within Colorado includes income from tangible or intangible property located or having a situs in this state and income from any activities carried on in this state, regardless of whether carried on in intrastate, interstate, or foreign commerce. In the case of a C corporation which is a component member of a controlled group of corporations as defined in section 1563 (a) of the internal revenue code, the sum of the Colorado net incomes of all the component members of the controlled group, but not the losses of each component member thereof, shall be used in computing the reduction for the controlled group. The reduction for the controlled group may be allocated between or among the component members thereof as agreed to by such members. If such an agreement is not reached, the executive director shall allocate the reduction based on the ratio of the Colorado net income of each component member to the total Colorado net incomes of all component members.

(c) For income tax years commencing on or after July 1, 1986, but before July 1, 1987, a tax is imposed upon each domestic C corporation and foreign C corporation doing business in Colorado annually in an amount equal to six percent of the net income of such C corporation during the year derived from sources within Colorado reduced pursuant to the reduction table set forth in subsection (1.3) of this section. Income from sources within Colorado includes income from tangible or intangible property located or having a situs in this state and income from any activities carried on in this state, regardless of whether carried on in intrastate, interstate, or foreign commerce. In the case of a C corporation which is a component member of a controlled group of corporations as defined in section 1563 (a) of the internal revenue code, the sum of the Colorado net incomes of all the component members of the controlled group, but not the losses of each component member thereof, shall be used in computing the reduction for the controlled group. The reduction for the controlled group may be allocated between or among the component members thereof as

agreed to by such members. If such an agreement is not reached, the executive director shall allocate the reduction based on the ratio of the Colorado net income of each component member to the total Colorado net incomes of all component members.

(d) (I) A tax is imposed upon each domestic C corporation and foreign C corporation doing business in Colorado annually in an amount of the net income of such C corporation during the year derived from sources within Colorado as set forth in the following schedule of rates:

(A) For income tax years commencing on or after July 1, 1987, but before July 1, 1988:

**If the Colorado
net income is:**

The tax is:

\$50,000.00 or less

5.5% of the Colorado net income

Over \$50,000.00

\$2,750.00 plus 6% of the excess
Colorado net income over \$50,000.00

(B) For income tax years commencing on or after July 1, 1988, but before July 1, 1989:

**If the Colorado
net income is:**

The tax is:

\$50,000.00 or less

5% of the Colorado net income

Over \$50,000.00

\$2,500.00 plus 5.5% of the excess
Colorado net income over \$50,000.00

(C) For income tax years commencing on or after July 1, 1989, but before July 1, 1990:

**If the Colorado
net income is:**

The tax is:

\$50,000.00 or less

5% of the Colorado net income

Over \$50,000.00

\$2,500.00 plus 5.4% of the excess
Colorado net income over \$50,000.00

(D) For income tax years commencing on or after July 1, 1990, but before July 1, 1991:

**If the Colorado
net income is:**

The tax is:

\$50,000.00 or less

5% of the Colorado net income

Over \$50,000.00

\$2,500.00 plus 5.3% of the excess
Colorado net income over \$50,000.00

(E) For income tax years commencing on or after July 1, 1991, but before July 1, 1992:

**If the Colorado
net income is:**

The tax is:

\$50,000.00 or less

5% of the Colorado net income

Over \$50,000.00

\$2,500.00 plus 5.2% of the excess
Colorado net income over \$50,000.00

(F) For income tax years commencing on or after July 1, 1992, but before July 1, 1993:

If the Colorado net income is:	The tax is:
\$50,000.00 or less	5% of the Colorado net income
Over \$50,000.00	\$2,500.00 plus 5.1% of the excess Colorado net income over \$50,000.00

(G) For income tax years commencing on or after July 1, 1993, but prior to January 1, 1999, five percent of the Colorado net income;

(H) For income tax years commencing on or after January 1, 1999, but prior to January 1, 2000, four and three-quarters percent of the Colorado net income;

(I) Except as otherwise provided in section 39-22-627, for income tax years commencing on or after January 1, 2000, four and sixty-three one hundredths percent of the Colorado net income.

(II) For purposes of this paragraph (d), income from sources within Colorado shall be determined in accordance with the provisions of this part 3 and includes income from tangible or intangible property located or having a situs in this state and income from any activities carried on in this state, regardless of whether carried on in intrastate, interstate, or foreign commerce. In the case of a C corporation which is a component member of a controlled group of corporations as defined in section 1563 (a) of the internal revenue code, the sum of the Colorado net incomes of all the component members of the controlled group, but not the losses of each component member thereof, shall be used in computing the tax bracket for the controlled group. The tax bracket for the controlled group may be allocated between or among the component members thereof as agreed to by such members. If such an agreement is not reached, the executive director shall allocate the tax bracket based on the ratio of the Colorado net income of each component member to the total Colorado net incomes of all component members.

(1.1) For income tax years commencing on or after January 1, 1981, but before January 1, 1982, the tax imposed by paragraph (b) of subsection (1) of this section shall be reduced in accordance with the following table:

If the Colorado net income is:	The reduction is:
Not over \$25,000.00	1% of the Colorado net income
Over \$25,000.00 but not over \$50,000.00	\$250.00 plus 0.5% of the excess over \$25,000.00
Over \$50,000.00	\$375.00

(1.2) For income tax years commencing on or after January 1, 1982, but before January 1, 1983, the tax imposed by paragraph (b) of subsection (1) of this section shall be reduced in accordance with the following table:

If the Colorado net income is:	The reduction is:
Not over \$25,000.00	1% of the Colorado net income
Over \$25,000.00 but not over \$75,000.00	\$250.00 plus 0.5% of the excess over \$25,000.00
Over \$75,000.00	\$500.00

(1.3) For income tax years commencing on or after July 1, 1986, but before July 1, 1987, the tax imposed by paragraph (c) of subsection (1) of this section shall be reduced in accordance with the following table:

If the Colorado net income is:

The reduction is:

Not over \$50,000.00.	75% of the Colorado net income
Over \$50,000.00 but not over \$200,000.00	\$375.00 plus .5% of the excess over \$50,000.00
Over \$200,000.00	\$1,125.00

(1.4) and (1.5) Repealed.

(2) Any corporation which is required by the terms of this article to file a return, and whose only activities in Colorado consist of making sales, and which does not own or rent real estate within the state of Colorado, and whose annual gross sales in or into this state amount to not more than one hundred thousand dollars may elect to pay a tax of one-half of one percent of its annual gross receipts derived from sales in or into Colorado in lieu of paying an income tax.

(3) (a) As used in this section:

(I) "Charitable organization" means a charitable organization exempt from federal income taxation under the provisions of the internal revenue code.

(II) "Crop" means an agricultural crop, including but not limited to grains, fruits, and vegetables, which is usable as food for human beings.

(III) "Crop contribution" means a contribution of a crop or portion of a crop to a charitable organization by a taxpayer engaged in the trade or business of farming or processing of a crop.

(IV) "Livestock" means cattle, swine, poultry, or other animals raised for profit and usable as food for human beings.

(V) "Livestock contribution" means a contribution of livestock to a charitable organization by a taxpayer engaged in the trade or business of raising or processing of livestock.

(VI) "Most recent sale price" means an amount equal to the price which the taxpayer would have received for the crop or livestock contributed, determined as if the crop or livestock had been sold on the date of the most recent sale of such a crop or livestock and at the same price per unit as the crop or livestock which was sold on that date.

(VII) "Wholesale market price" means the average wholesale market price for the crop or livestock contributed in the nearest regional market during the month in which the contribution is made, determined without consideration of grade or quality of the crop or livestock and as if the quantity of the crop or livestock contributed were marketable.

(b) There shall be allowed to taxpayers, as a credit with respect to the income taxes imposed by this part 3, an amount equal to twenty-five percent of the wholesale market price or twenty-five percent of the most recent sale price of crop contributions or livestock contributions, or both, made to a tax-exempt charitable organization. Credit, as provided for in this subsection (3), may not exceed one thousand dollars per tax year.

(c) Unused portions of such credit may be carried forward to subsequent tax years as credit against income taxes due for those years. However, such credit must be used within five years of the end of the tax year in which the contribution was made.

(d) The credit under this section is available only if the following conditions are met:

(I) The crop is harvested or the livestock is slaughtered by or on behalf of the donee charitable organization;

(II) The use of the crop or livestock by the donee charitable organization is related to the purpose or function constituting the basis for the organization's tax-exempt status;

(III) The crop or livestock is not transferred by the donee charitable organization in exchange for money, other property, or services. This condition shall not apply in those cases where the donee charitable organization functions as a clearinghouse for distribution, without expectation of remuneration, of such crops or livestock, or both, to other charitable

organizations. These secondary donees shall be subject to the provisions of this section in the same measure as if the contribution were received by that tax-exempt charitable organization directly from the original donor.

(IV) The taxpayer and any subsequent donors shall receive from the donee charitable organization a written statement declaring that its use and disposition of the crop or livestock will be in accordance with this section;

(V) No taxpayer who donates items of food to a tax-exempt charitable organization for use or distribution in providing assistance shall be liable for damages in any civil action or subject to prosecution in any criminal proceeding resulting from the nature, age, condition, or packaging of such crop contributions or livestock contributions, or both. However, the exemption shall not apply to the willful, wanton, or reckless acts of donors which result in injury to the recipients of such contributed foods.

Source: L. 64: R&RE, p. 768, § 1. C.R.S. 1963: § 138-1-35. L. 69: p. 1129, § 2. L. 81: (1) amended, (1.1), (1.2), (1.3), (1.4), and (1.5) added, p. 1872, § 9, effective June 29. L. 82: (3) added, p. 564, § 2, effective April 22. L. 83: (1) and (1.1) to (1.5) amended, p. 1516, § 2, effective March 22; (1) and (1.3) to (1.5) amended, p. 2096, § 3, effective October 13. L. 85: (1) and (1.3) to (1.5) amended, p. 1265, § 3, effective May 30. L. 86: (1) amended, (1.3) and (1.4) R&RE, and (1.5) repealed, pp. 1117, 1118, 1120, §§ 14, 15, 22, effective July 1. L. 86, 2nd Ex. Sess.: (1.3) and (1.4) amended, p. 73, § 1, effective August 15. L. 87: (1)(b) and (1)(c) amended, (1)(d) and (3) R&RE, and (1.4) repealed, pp. 1438, 1439, 1457, §§ 7, 8, 31, effective June 22; (1)(d)(I)(A) amended, p. 1590, § 70, effective July 10. L. 89: (1)(d)(II) amended, p. 1499, § 1, effective July 1, 1990. L. 92: (1)(a) to (1)(c), IP(1)(d)(I), and (1)(d)(II) amended, p. 2266, § 7, effective April 16. L. 99: (1)(d)(I)(G) amended and (1)(d)(I)(H) added, p. 1376, § 2, effective August 4. L. 2000: (1)(d)(I)(H) amended and (1)(d)(I)(I) added, p. 1414, § 3, effective August 2. L. 2005: (1)(d)(I)(I) amended, p. 1361, § 2, effective June 6.

Editor's note: Subsection (2) of this section implements the requirements of Article III, Section 2, of the Multistate Tax Compact, § 24-60-1301.

ANNOTATION

Law reviews. For comment on *Arvey Corp. v. Fugate* appearing below, see 31 *Dicta* 400 (1954). For note, "Colorado Taxation of Foreign Corporate Income", see 35 *U. Colo. L. Rev.* 354 (1963). For note, "Doing Business in Colorado for Foreign Corporations: Service of Process, Qualification, Taxation", see 49 *Den. L.J.* 529 (1973). For article, "Colorado's Income Tax as Applied to Foreign Holding Companies", see 23 *Colo. Law.* 1107 (1994).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Corporate income tax constitutional. A state which provides an orderly market in which to transact business confers benefits which constitutionally justify the levy of a corporate income tax. *GMC v. State*, 181 Colo. 360, 509 P.2d 1260 (1973).

General assembly has sought to tax all income that Colorado can constitutionally tax. *Coors Porcelain Co. v. State*, 183 Colo. 325, 517 P.2d 838 (1973), cert. denied, 419 U.S. 874, 95 S. Ct. 136, 42 L. Ed.2d 113 (1974).

The expression "income from sources within [Colorado]" is broad and all-inclusive. *Arvey Corp. v. Fugate*, 129 Colo. 595, 272 P.2d

652, cert. denied, 348 U.S. 871, 75 S. Ct. 106, 99 L. Ed. 685 (1954).

Compensation for damages or injuries cannot be classified as "income" for the purposes of taxation. *Arvey Corp. v. Fugate*, 129 Colo. 595, 272 P.2d 652, cert. denied, 348 U.S. 871, 75 S. Ct. 106, 99 L. Ed. 685 (1954).

Business situs of intangibles separate and distinct from domicile. In the matter of assessment as applied in income taxation, there appears to be a business situs of intangibles which may be separate and distinct from the domicile of the owner. *Arvey Corp. v. Fugate*, 129 Colo. 595, 272 P.2d 652, cert. denied, 348 U.S. 871, 75 S. Ct. 106, 99 L. Ed. 685 (1954).

Both manufacture of product and its ultimate sale contribute to a corporation's income for state income tax purposes. *GMC v. State*, 181 Colo. 360, 509 P.2d 1260 (1973).

Gross income from sales of goods shipped into state not taxable. Gross income derived from sales of goods made from factories or branches outside of the state and shipped on orders solicited in the state to customers here by common carrier f.o.b. the point of delivery is not taxable. *State ex rel. Cruse v. Am. Can Co.*, 117

Colo. 312, 186 P.2d 779 (1947) (decided under former law).

Sales made by out-of-state corporate representatives soliciting orders. A state can tax the income of a domestic corporation derived from sales made in other states by corporate representatives soliciting orders in the other states. *Coors Porcelain Co. v. State*, 183 Colo. 325, 517 P.2d 838 (1973), cert. denied, 419 U.S. 874, 95 S. Ct. 136, 42 L. Ed.2d 113 (1974).

Net income from foreign corporation's interstate operations taxable. The net income from the exclusively interstate operations of a foreign corporation may be subjected to state taxation, provided the levy is not discriminatory and is properly apportioned to local activities. *GMC v. State*, 181 Colo. 360, 509 P.2d 1260 (1973).

Presumption that percentage allocation for foreign corporation fair. Where a statutory formula for the taxation of a foreign corporation is not intrinsically invalid, there is a strong presumption that the percentage allocation is fair. *GMC v. State*, 181 Colo. 360, 509 P.2d 1260 (1973).

39-22-302. S corporations. An S corporation shall not be subject to taxation under this article.

Source: L. 64: R&RE, p. 768, § 1. **C.R.S. 1963:** § 138-1-36. **L. 92:** Entire section amended, p. 2265, § 3, effective April 16.

ANNOTATION

Law reviews. For article, "S Corporations in Colorado: Recent Cases and Legislation", see 14 Colo. Law. 1412 (1985).

Subchapter S shareholders' income not taxable. Income which is attributed to the share-

Fairness is not equated with absolute precision. *GMC v. State*, 181 Colo. 360, 509 P.2d 1260 (1973).

Difference of nine-tenths percent too small to be unconstitutional. A difference of nine-tenths percent between the computation of a railroad and that of the director of revenue concerning the allocation of apportionable income to Colorado is too small to constitute an unlawful burden upon interstate commerce, a violation of due process, or a violation of equal protection. *Union P.R.R. v. Heckers*, 181 Colo. 374, 509 P.2d 1255, appeal dismissed, 414 U.S. 806, 94 S. Ct. 74, 38 L. Ed.2d 42 (1973).

Direct deduction of ad valorem taxes from net income is not required. *Union P.R.R. v. Heckers*, 181 Colo. 374, 509 P.2d 1255, appeal dismissed, 414 U.S. 806, 94 S. Ct. 74, 38 L. Ed.2d 42 (1973).

Applied in *In re Golden State Bank v. Dolan*, 37 Colo. App. 29, 543 P.2d 1307 (1975); *Miller Int'l, Inc. v. State Dept. of Rev.*, 646 P.2d 341 (Colo. 1982); *Hewlett-Packard Co. v. State Dept. of Rev.*, 749 P.2d 400 (Colo. 1988).

holders of a subchapter S corporation is not "dividends" subject to the surtax under section 39-22-106 (1). *Cohen v. Dept. of Rev.*, 197 Colo. 385, 593 P.2d 957 (1979) (decided under former 39-22-106 prior to its deletion).

39-22-303. Dividends in a combined report - foreign source income - affiliated groups - definitions.

(1) to (5) (Deleted by amendment, L. 2008, p. 955, § 7, effective January 1, 2009.)

(6) In the case of two or more C corporations, whether domestic or foreign, owned or controlled directly or indirectly by the same interests, the executive director may, to avoid abuse, on a fair and impartial basis, distribute or allocate the gross income and deductions between or among such C corporations in order to clearly reflect income.

(7) (Deleted by amendment, L. 2008, p. 955, § 7, effective January 1, 2009.)

(8) The executive director shall not require the inclusion in a combined report of the income of any C corporation which conducts business outside the United States if eighty percent or more of the C corporation's property and payroll, as determined by factoring pursuant to section 24-60-1301, C.R.S., is assigned to locations outside the United States. For the purpose of this subsection (8), "United States" shall be restricted to the fifty states and the District of Columbia.

(9) Dividends which a C corporation includable in a combined report receives from another C corporation also includable in the combined report shall be excluded from taxable income.

(10) As used in this subsection (10), "foreign source income" means taxable income from sources without the United States, as used in section 862 of the internal revenue code.

In apportioning and allocating income pursuant to section 39-22-303.5 or 39-22-303.7, foreign source income shall be considered only to the extent provided in this subsection (10):

(a) If, for federal income tax purposes, the taxpayer has elected to claim foreign taxes paid or accrued as a deduction, then all foreign source income minus such deduction shall be considered;

(b) (I) If, for federal income tax purposes, the taxpayer has elected to claim foreign taxes paid or accrued as a credit, then foreign source income shall be considered only to the extent that such income exceeds the exclusion provided by this paragraph (b).

(II) For income tax years commencing prior to January 1, 2000, the amount to be excluded shall be determined by multiplying the foreign source income by a fraction, the numerator of which is the total of taxes paid or accrued to foreign countries and United States possessions by or on behalf of the C corporation pursuant to section 901 or 902 of the internal revenue code, deemed paid pursuant to section 902 or 960 of the internal revenue code for the tax year, or carried over or carried back to such tax year pursuant to section 904 (c) of the internal revenue code. The denominator of said fraction shall be forty-six percent of the foreign source income.

(III) For income tax years commencing on or after January 1, 2000, the amount to be excluded shall be determined by multiplying the foreign source income by a fraction, the numerator of which is the total of taxes paid or accrued to foreign countries and United States possessions by or on behalf of the C corporation pursuant to section 901 or 902 of the internal revenue code, deemed paid pursuant to section 902 or 960 of the internal revenue code for the tax year, or carried over or carried back to such tax year pursuant to section 904 (c) of the internal revenue code. The denominator of said fraction shall be the same percentage as the effective federal corporate income tax rate multiplied by the foreign source income. As used in this subsection (10), "effective federal corporate income tax rate" means the taxpayer's federal corporate income tax calculated in accordance with section 11 (a) and (b) of the internal revenue code for such tax year divided by the taxpayer's federal taxable income.

(c) Foreign source income from a foreign C corporation within an affiliated group of C corporations shall be determined without regard to section 882 (a) (2) of the internal revenue code.

(11) (a) In the case of an affiliated group of C corporations, the executive director may require, or the taxpayer may file, a combined report, but such report shall only include those members of an affiliated group of C corporations as to which any three of the following facts have been in existence in the tax year and the two preceding tax years:

(I) Sales or leases by one affiliated C corporation to another affiliated C corporation constitute fifty percent or more of the gross operating receipts of the C corporation making the sales or leases; or, purchases or leases from one affiliated C corporation by another affiliated C corporation constitute fifty percent or more of the cost of goods sold or leased by the C corporation making the purchases or leases. This subparagraph (I) shall not apply to the following transactions between affiliated C corporations: The issuance of commercial paper or other debt obligations and the use of the proceeds therefrom to make loans or to purchase receivables between affiliated C corporations.

(II) Five or more of the following services are provided by one or more affiliated C corporations for the benefit of another affiliated C corporation: Advertising and public relations services; accounting and bookkeeping services; legal services; personnel services; sales services; purchasing services; research and development services; insurance procurement and servicing exclusive of employee benefit programs; and employee benefit programs including pension, profit-sharing, and stock purchase plans. A service shall be deemed provided if fifty percent or more of the service is provided without provision for an "arm's length charge" within the meaning of the United States treasury regulation 1.482-2 (b) (3).

(III) Twenty percent or more of the long-term debt of one affiliated C corporation is owed to or guaranteed by another affiliated C corporation. For the purposes of this subparagraph (III), "long-term debt" means debt which becomes due more than one year after incurred.

(IV) One affiliated C corporation substantially uses the patents, trademarks, service marks, logo-types, trade secrets, copyrights, or other proprietary materials owned by another affiliated C corporation.

(V) Fifty percent or more of the members of the board of directors of one affiliated C corporation are members of the board of directors or are corporate officers of another affiliated C corporation.

(VI) Twenty-five percent or more of the twenty highest-ranking officers of an affiliated C corporation are members of the board of directors or are corporate officers of another affiliated C corporation.

(b) The net income of the affiliated C corporations which are to be included in a combined report shall be determined pursuant to the rules and regulations promulgated pursuant to section 1502 of the internal revenue code, as modified by section 39-22-304.

(c) If an affiliated C corporation is included in a combined report, section 39-22-303.5 or 39-22-303.7 shall be applied with the following modifications:

(I) Intercompany transactions among the affiliated C corporations shall be excluded from the numerator and denominator of the apportionment calculation set forth in section 39-22-303.5; and

(II) The numerator of the apportionment calculation set forth in section 39-22-303.5 shall be, to the extent applicable, the sum of the sales of those affiliated C corporations doing business in Colorado.

(d) The executive director shall not require returns to be made on a consolidated basis, but an affiliated group of C corporations may elect to file a consolidated return as otherwise provided in this article.

(e) (Deleted by amendment, L. 2008, p. 955, § 7, effective January 1, 2009.)

(12) (a) As used in subsections (10) and (11) of this section, the term “affiliated group” means one or more chains of includable C corporations connected through stock ownership with a common parent C corporation which is an includable C corporation if:

(I) Stock possessing more than fifty percent of the voting power of all classes of stock and more than fifty percent of each class of the nonvoting stock of each of the includable C corporations, except the common parent C corporation, is owned directly by one or more of the other includable C corporations; and

(II) The common parent C corporation owns directly stock possessing more than fifty percent of the voting power of all classes of stock and more than fifty percent of each class of the nonvoting stock of at least one of the other includable C corporations.

(b) As used in this subsection (12), the term “stock” does not include nonvoting stock which is limited and preferred as to dividends, employer securities, within the meaning of section 409(1) of the internal revenue code, while such securities are held under a tax credit employee stock ownership plan, or qualifying employer securities, within the meaning of section 4975(e)(8) of the internal revenue code, while such securities are held under an employee stock ownership plan which meets the requirements of section 4975(e)(7) of the internal revenue code.

(c) As used in this subsection (12), the term “includable C corporations” means any C corporation which has more than twenty percent of the C corporation’s property and payroll as determined by factoring pursuant to section 24-60-1301, C.R.S., assigned to locations inside the United States.

(13) The executive director shall, within existing appropriations to the department of revenue, promulgate rules and regulations to apply and administer the provisions of this section. Such rules and regulations shall be available for public review and comment not later than July 1, 1990.

(14) (Deleted by amendment, L. 2008, p. 955, § 7, effective January 1, 2009.)

Source: L. 64: R&RE, p. 769, § 1. C.R.S. 1963: § 138-1-37. L. 79: Entire section R&RE, p. 1443, § 34, effective July 3. L. 80: (7) added, p. 731, § 1, effective March 17. L. 85: (8) to (12) added, p. 1273, § 1, effective June 12. L. 89: (5)(a) and (6) amended and (13) added, p. 1499, § 2, effective July 1, 1990. L. 92: (1) to (3), (4)(a), (4)(d)(I), (4)(d)(V) to (4)(d)(VII), (4)(e), IP(5)(b), (5)(b)(III), (5)(c), (6), (8), (9), (10)(b), (10)(c), (11), (12)(a), and (12)(c) amended, p. 2268, § 8, effective April 16. L. 93: (14) added, p. 1320, § 4,

effective June 6. **L. 96:** (5)(c) amended, p. 165, § 5, effective July 1. **L. 99:** (10)(b) amended, p. 1282, § 1, effective August 4. **L. 2004:** (12)(b) amended, p. 1209, § 90, effective August 4. **L. 2008:** (1), (2), (3), (4), (5), (7), IP(10), (11)(c), (11)(e), and (14) amended, p. 955, § 7, effective January 1, 2009.

ANNOTATION

Two-factor formula constitutional. The two-factor formula, consisting of sales and property factors in the computation of income tax for a foreign corporation is not intrinsically arbitrary, and, thus, is constitutional. *GMC v. State*, 181 Colo. 360, 509 P.2d 1260 (1973).

Difference of nine-tenths percent too small to be unconstitutional. A difference of nine-tenths percent between the computation of a railroad and that of the director of revenue concerning the allocation of apportionable income to Colorado is too small to constitute an unlawful burden upon interstate commerce, a violation of due process, or a violation of equal protection. *Union P.R.R. v. Heckers*, 181 Colo. 374, 509 P.2d 1255, appeal dismissed, 414 U.S. 806, 94 S. Ct. 74, 38 L. Ed.2d 42 (1973).

General assembly decides which taxation formula economically sound. It is not the trial court's function, nor that of the supreme court, to decide which formula for the taxation of a foreign corporation is the most economically sound, as this is a policy decision for the general assembly. *GMC v. State*, 181 Colo. 360, 509 P.2d 1260 (1973).

Presumption that percentage allocation for foreign corporation fair. Where a statutory formula for the taxation of a foreign corporation is not intrinsically invalid, there is a strong presumption that the percentage allocation is fair. *GMC v. State*, 181 Colo. 360, 509 P.2d 1260 (1973).

Regulation may not modify or contravene existing statute. A regulation must further the will of the general assembly and may not modify or contravene an existing statute. *Miller Int'l, Inc. v. State Dept. of Rev.*, 646 P.2d 341 (Colo. 1982).

Else it is invalid. A method of allocation of income which is established by regulation, but which is inconsistent with this section, is invalid. *Miller Int'l, Inc., v. State Dept. of Rev.*, 646 P.2d 341 (Colo. 1982).

Fairness is not equated with absolute precision. *GMC v. State*, 181 Colo. 360, 509 P.2d 1260 (1973).

Heavy burden lies on party challenging constitutional validity of tax apportionment formula. *GMC v. State*, 181 Colo. 360, 509 P.2d 1260 (1973).

He must show by "clear and convincing evidence" that the use of the particular formula results in extraterritorial values being taxed. *GMC v. State*, 181 Colo. 360, 509 P.2d 1260 (1973).

Allocation method valid if calculates income "reasonably attributed" to state transactions. The method of allocation of unitary income between states is valid if it is fairly calculated to assign to a state that portion of the net income "reasonably attributable" to the business transacted in that state. *Union P.R.R. v. Heckers*, 181 Colo. 374, 509 P.2d 1255, appeal dismissed, 414 U.S. 806, 94 S. Ct. 74, 38 L. Ed.2d 42 (1973).

Direct deduction of ad valorem taxes from net income is not required. *Union P.R.R. v. Heckers*, 181 Colo. 374, 509 P.2d 1255, appeal dismissed, 414 U.S. 806, 94 S. Ct. 74, 38 L. Ed.2d 42 (1973).

Director may change method of allocation. The fact that a corporation uniformly has been permitted to allocate Colorado and out-of-state income does not mean that the director may not change the method of allocation. *Coors Porcelain Co. v. State*, 183 Colo. 325, 517 P.2d 838 (1973), cert. denied, 419 U.S. 874, 95 S. Ct. 136, 42 L. Ed.2d 113 (1974).

Department may allocate income among corporations owned by same interests. The department of revenue may distribute or allocate the income of corporations owned or controlled by the same interests if it concludes that is the most effective method of taxing all the income that Colorado can constitutionally tax. *Joslin Dry Goods Co. v. Dolan*, 615 P.2d 16 (Colo. 1980); *Hewlett-Packard Co. v. State Dept. of Rev.*, 749 P.2d 400 (Colo. 1988).

Recognized test for a unitary business is "whether or not the operation of the portion of the business within the state is dependent upon or contributory to the operation of the business outside the state". *Joslin Dry Goods Co. v. Dolan*, 615 P.2d 16 (Colo. 1980).

The income of foreign subsidiaries of a unitary business, even though such income is not federal taxable income, should be included in determining the net income base for a corporation. *Hewlett-Packard Co. v. State Dept. of Rev.*, 749 P.2d 400 (Colo. 1988).

Section authorizes department to require combined reports. It is this section's provision for the distribution and allocation of income and deductions which authorizes the department to require combined reports. *Joslin Dry Goods Co. v. Dolan*, 615 P.2d 16 (Colo. 1980).

A combined-consolidated filing is permissible. An affiliated group that is required to file a combined return may also elect to file a consolidated return. This type of return was clearly

allowed under the published statutes and the related department regulations. *Cendant Corp. & Subs. v. Dept. of Rev.*, 226 P.3d 1102 (Colo. App. 2009).

39-22-303.1. Interstate banking or branching - nondiscriminatory tax treatment.

(1) On or before June 1, 1997, the executive director shall promulgate regulations to ensure nondiscriminatory tax treatment of financial organizations engaged in interstate banking or interstate branching and, in connection therewith, shall consider:

(a) Any recommendations of the multistate tax commission established under the provisions of section 24-60-1301, C.R.S., regarding the taxation and allocation of income and expenses of financial organizations; and

(b) Applying the multistate tax compact, as set forth in part 13 of article 60 of title 24, C.R.S., to financial organizations.

Source: L. 95: Entire section added, p. 770, § 16, effective July 1.

39-22-303.5. Single-factor apportionment of business income - allocation of non-business income - rules - definitions. (1) As used in this section, unless the context otherwise requires:

(a) "Business income" means the net income of the taxpayer arising from the transactions and activity in the regular course of a taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations. For purposes of administration of this section, the income of the taxpayer is business income unless clearly classifiable as nonbusiness income.

(b) "Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.

(c) "Nonbusiness income" means all income other than business income.

(d) "Sales" means all gross receipts of the taxpayer not allocated under subsection (5) of this section and not otherwise excluded from the calculation of net income; except that, for the sale of intangible property, "sales" means the gain from the sale and not the gross receipts.

(e) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

(f) "Taxpayer" means a C corporation or any nonresident individual, nonresident partner, or S corporation that is permitted or required pursuant to another provision of law to apportion and allocate revenue pursuant to this section.

(2) (a) For income tax years commencing prior to January 1, 2009, a taxpayer shall apportion and allocate income pursuant to section 24-60-1301, C.R.S., or apportion income pursuant to section 39-22-303, as those sections existed immediately prior to January 1, 2009.

(b) For income tax years commencing on or after January 1, 2009, a taxpayer shall apportion and allocate the taxpayer's entire net income as provided in this section.

(3) (a) If a taxpayer has no income from business activity outside of Colorado, the taxpayer's entire net income shall be allocated to Colorado.

(b) A taxpayer having income from business activity that is taxable both within and without Colorado shall apportion and allocate the taxpayer's net income as provided in this section.

(c) For purposes of apportionment and allocation of income under this section, a taxpayer is taxable in another state if:

(I) In that state, the taxpayer is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, a corporate stock tax, or any similar tax; or

(II) That state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state subjects the taxpayer to such tax.

(4) (a) A taxpayer's business income shall be apportioned to Colorado by multiplying such business income by a fraction, the numerator of which is the total sales of the taxpayer

in Colorado during the tax period and the denominator of which is the total sales of the taxpayer everywhere during the tax period.

(b) Sales of tangible personal property, including gross receipts from leases and other uses of tangible personal property, are in Colorado if:

(I) The property is delivered or shipped to a purchaser in Colorado regardless of the f.o.b. point or other conditions of the sale; or

(II) The property is shipped from an office, store, warehouse, factory, or other place of storage in Colorado and the taxpayer is not taxable in the state to which the property is shipped.

(c) Sales, other than sales of tangible personal property, are in Colorado as follows:

(I) Revenue from services rendered in Colorado;

(II) Rents and royalties from real property located in Colorado;

(III) Gross proceeds from the sale of real property located in Colorado;

(IV) Interest and dividend income to the extent included in taxable income, if the taxpayer's commercial domicile is in Colorado;

(V) Gain from the sale of intangible property if the taxpayer's commercial domicile is in Colorado;

(VI) Patent and copyright royalties, if and to the extent that:

(A) The patent or copyright is utilized by the payer in Colorado; or

(B) The patent or copyright is utilized by the payer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in Colorado; and

(VII) Revenue from the performance of purely personal services, if the income-producing activity is performed in Colorado.

(d) Notwithstanding any other provision of this subsection (4), in apportioning the income of a taxpayer engaged in the business of publishing magazines or periodicals either through print or electronic media, sales related to advertising in magazines or periodicals shall be part of the taxpayer's total sales in Colorado only to the extent that such magazines or periodicals are delivered within Colorado. The determination of the extent to which magazines or periodicals are delivered within Colorado shall be based upon the ratio that the delivery of magazines or periodicals by such taxpayer or tax-reporting entity in Colorado bears to the total delivery of magazines and periodicals by such taxpayer or tax-reporting entity.

(e) Notwithstanding any other provision of law, no foreign source income that is included in taxable income shall be included as sales of the taxpayer in Colorado for purposes of apportioning business income pursuant to this subsection (4).

(f) For purposes of subparagraph (VI) of paragraph (c) of this subsection (4) and paragraph (g) of subsection (5) of this section:

(I) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patented product is produced in the state. If the basis of the receipts from the patent royalties cannot be reasonably assigned to states or if the accounting procedures do not reflect the states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.

(II) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties cannot be reasonably assigned to states or if the accounting procedures do not reflect the states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.

(5) A taxpayer's rents and royalties from real or tangible personal property, capital gains, interest, dividends, patent or copyright royalties, or other income, to the extent that they constitute nonbusiness income, shall be allocated as follows:

(a) Net rents and royalties from real property located in Colorado shall be allocated to Colorado;

(b) (I) Net rents and royalties from tangible personal property shall be allocated to Colorado:

(A) If and to the extent that the property is utilized in Colorado; or

(B) In their entirety if the taxpayer's commercial domicile is in Colorado and the taxpayer is not organized under the laws of, or taxable in, the state in which the property is utilized.

(II) For purposes of this paragraph (b), the extent of utilization of tangible personal property in Colorado shall be determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in Colorado during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property shall be utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

(c) Capital gains and losses from sales of real property located in Colorado shall be allocated to Colorado;

(d) Capital gains and losses from sales of tangible personal property shall be allocated to Colorado if:

(I) The property had a situs in Colorado at the time of the sale; or

(II) The taxpayer's commercial domicile is in Colorado and the taxpayer is not taxable in the state in which the property had a situs;

(e) Capital gains and losses from sales of intangible property shall be allocated to Colorado if the taxpayer's commercial domicile is in Colorado;

(f) Interest and dividends shall be allocated to Colorado if the taxpayer's commercial domicile is in Colorado;

(g) Patent and copyright royalties shall be allocated to Colorado if and to the extent that:

(I) The patent or copyright is utilized by the payer in Colorado; or

(II) The patent or copyright is utilized by the payer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in Colorado; and

(h) Nonbusiness income that is not otherwise allocated pursuant to this subsection (5) shall be allocated pursuant to subsection (7) of this section.

(6) Notwithstanding any other provision of this section, for each taxable year commencing on or after January 1, 2009, a taxpayer may elect to treat all income as business income. This election shall be made in accordance with rules adopted by the department of revenue and shall be made by the extended due date of the tax return. Once made, the election shall be irrevocable for such tax year.

(7) (a) In the case of certain industries where unusual factual situations produce inequitable results under the apportionment and allocation provisions of this section, the executive director shall promulgate rules for determining the apportionment and allocation factors for each such industry, but such rules shall be applied uniformly.

(b) If the apportionment and allocation provisions of this section do not fairly represent the extent of the taxpayer's activities in Colorado, the taxpayer may petition for, or the executive director may require, with respect to all or any part of the taxpayer's business activities, if reasonable:

(I) Separate accounting;

(II) The inclusion of one or more additional factors that will fairly represent the taxpayer's business activity in Colorado; or

(III) The employment of any other method to effectuate an equitable apportionment or allocation of the taxpayer's income, fairly calculated to determine the net income derived from or attributable to sources in Colorado.

(c) If the executive director requires the taxpayer to change its present method of reporting, the executive director shall notify the taxpayer in writing of the reason for the required change. The notice shall be made by first-class mail as set forth in section 39-21-105.5 and shall be sufficiently particular to give the taxpayer adequate information as to the reasons for the change so that the taxpayer may frame an answer for and defend its present method of reporting if it decides to appeal.

(d) The department of revenue, from time to time, shall publish all rulings of general public interest with respect to any application of the provisions of this subsection (7).

(e) If requested by the director of research of the legislative council, the executive director shall require taxpayers to provide additional information related to apportionment and allocation of income to support an income tax return for the purpose of providing such information to legislative council staff to improve the accuracy of fiscal notes and reports to the legislature. The executive director shall aggregate such additional information so as to preserve the confidentiality of the taxpayer's information and comply with section 39-21-113.

(8) A bank, savings and loan, credit union, or other taxpayer making or purchasing loans whose only business activity within Colorado is the ownership of property acquired through the process of foreclosure, or was obtained through a procedure exercised in lieu of the entity exercising its right to foreclose, which property is later disposed of within twenty-four months after obtaining ownership, shall directly allocate net income for such property during such time and any gains or losses realized from the sale of such foreclosed property to the state where the property is located. Such limited activities shall not render a bank, savings and loan, credit union, or other entity subject to the other allocation and apportionment provisions of this section.

(9) The executive director shall promulgate rules in accordance with article 4 of title 24, C.R.S., to apply and administer the provisions of this section. Any rules that the executive director promulgated in order to apply and administer section 39-22-303 or 24-60-1301, C.R.S., that may be used to apply and administer the provisions of this section, including provisions to apply and administer the sales factor for special industries, which are set forth in 1 CCR 201-2, shall continue to be in effect unless inconsistent with the provisions of this section or specifically withdrawn by the executive director.

(10) On or before January 1, 2014, the director of the office of economic development shall prepare a report describing the economic impacts related to apportionment and allocation of taxable income pursuant to this section and deliver the report to the finance committees of the senate and house of representatives, or any successor committees.

Source: L. 2008: Entire section added, p. 958, § 8, effective January 1, 2009. **L. 2010:** IP(4)(f) amended, (HB 10-1422), ch. 419, p. 2121, § 174, effective August 11.

39-22-303.7. Sourcing of sales of mutual fund service corporations - definitions.

(1) As used in this section, unless the context otherwise requires:

(a) "Administration services" includes, but is not limited to, clerical, fund, or shareholder accounting and participant record keeping, transfer agency, bookkeeping, data processing, custodial, internal auditing, legal, and tax services performed for a regulated investment company. Services qualify as "administrative services" only if the provider of such services during the taxable year also provides, or is affiliated with a person that provides, management or distribution services to a regulated investment company during the same taxable year.

(b) "Distribution services" includes, but is not limited to, the services of advertising, servicing, marketing, or selling shares of a regulated investment company. The services of advertising, servicing, or marketing shares qualify as "distribution services" only when the service is performed by a person that is, or in the case of a closed-end company was, either engaged in the business of selling regulated investment company shares or affiliated with a person that is engaged in the service of selling regulated investment company shares. In the case of an open-end company, such service of selling shares must be performed pursuant to a contract entered into pursuant to 15 U.S.C. sec. 80a-15 (b), as amended.

(c) "Domicile" presumptively means the shareholder's mailing address on the records of the regulated investment company. If, however, the regulated investment company or the mutual fund service corporation has actual knowledge that the shareholder's primary residence or principal place of business is different from the shareholder's mailing address, the presumption shall not control. If the shareholder of record is a company that holds the shares of the regulated investment company as depositor for the benefit of a separate account, then the shareholder shall be the contract owners or policyholders of the contracts or policies supported by the separate account determined using any reasonable basis, such as zip codes of underlying shareholders or United States census bureau data in order to

determine the proper location for the assignment of these shares. If the regulated investment company or the mutual fund service corporation has actual knowledge that the shareholder's principal place of business is different from the shareholder's mailing address, the presumption shall not control.

(d) "Management services" includes, but is not limited to, any of the following: The rendering of investment advice, directly or indirectly, to a regulated investment company, making determinations as to when sales and purchases of securities are to be made on behalf of the regulated investment company, or providing services related to the selling or purchasing of securities constituting assets of a regulated investment company, and related activities. Services qualify as "management services" only when such activity or activities are performed pursuant to a contract with the regulated investment company entered into pursuant to 15 U.S.C. sec. 80a-15 (a), as amended, for a person that has entered into such contract with the regulated investment company or for a person that is affiliated with a person that has entered into such a contract with a regulated investment company.

(e) "Mutual fund sales" means gross receipts derived within the taxable year directly or indirectly from the rendering of management, distribution, or administration services to a regulated investment company, including gross receipts received directly or indirectly from trustees, sponsors, and participants of employee benefit plans that have accounts in a regulated investment company.

(f) "Mutual fund service corporation" means any corporation doing business in Colorado that derives gross income from the provision directly or indirectly of management, distribution, or administration services to or on behalf of a regulated investment company and from trustees, sponsors, and participants of employee benefit plans that have accounts in a regulated investment company.

(g) "Regulated investment company" means a regulated investment company as defined in section 851 of the federal "Internal Revenue Code of 1986", as amended.

(2) Notwithstanding any provision of section 39-22-303.5, for taxable years commencing on or after January 1, 2009, mutual fund sales by a mutual fund service corporation shall be considered Colorado sales for purposes of section 39-22-303.5 (4) (c), to the extent that shareholders of the regulated investment company are domiciled in Colorado as follows:

(a) (I) By multiplying the mutual fund service corporation's total dollar amount of mutual fund sales of such services on behalf of each regulated investment company by a fraction, the numerator of which shall be the average of the number of shares owned by the regulated investment company's shareholders domiciled in Colorado at the beginning of and at the end of the regulated investment company's taxable year that ends with or within the mutual fund service corporation's taxable year, and the denominator of which shall be the average of the number of shares owned by the regulated investment company shareholders everywhere at the beginning of and at the end of the regulated investment company's taxable year that ends with or within the mutual fund service corporation's taxable year.

(II) Notwithstanding subparagraph (I) of this paragraph (a), a mutual fund service corporation may use the year-end of the regulated investment company's fund advisor for this calculation, as long as the mutual fund service corporation consistently uses this method from year to year. For purposes of this paragraph (a), a regulated investment company's fund advisor is the person that is directly and primarily responsible for providing investment advice to the regulated investment company under a contract entered into pursuant to 15 U.S.C. sec. 80a-15 (a).

(b) If the domicile of a shareholder is unknown to the mutual fund service corporation because the shareholder of record is a person that holds the shares of a regulated investment company as a depositor for the benefit of others, the mutual fund service corporation may utilize any reasonable basis, such as zip codes of underlying shareholders or United States census bureau data, in order to determine the proper location for the assignment of the shares.

(c) A separate computation shall be made to determine the mutual fund sales for each regulated investment company, the sum of which shall equal the total mutual fund sales sourced to Colorado.

Source: L. 2008: Entire section added, p. 958, § 8, effective January 1, 2009. **L. 2009:** (1)(e), (1)(f), IP(2), and (2)(c) amended, (HB 09-1311), ch. 275, p. 1237, § 1, effective May 18.

39-22-304. Net income of corporation. (1) The net income of a C corporation means the C corporation's federal taxable income, as defined in the internal revenue code, for the taxable year, with the modifications specified in this section.

(2) There shall be added to federal taxable income:

(a) Any income, war profits, or excess profits taxes paid or accrued to any foreign country or to any possession of the United States that were deducted on the federal income tax return;

(b) Interest income less amortization of premium on obligations of any state or any political subdivision thereof, other than interest income on obligations of this state or a political subdivision thereof which are issued on or after May 1, 1980. Interest income on obligations of this state or a political subdivision thereof which were issued before May 1, 1980, shall be exempt from income tax to the extent that such interest is specifically so exempt under the laws of this state authorizing the issuance of such obligations. The amount of such interest shall be the net amount after reduction by the amount of the deductions related thereto which are required by the internal revenue code to be allocated to such classes of interest.

(c) The federal net operating loss deduction;

(d) Income taxes imposed by this state to the extent deducted in determining federal taxable income, except the tax imposed by article 29 of this title;

(e) (I) Any expenses incurred by a taxpayer with respect to expenditures made at, or payments made to, a club licensed pursuant to section 12-47-416, C.R.S., which has a policy to restrict membership on the basis of sex, sexual orientation, marital status, race, creed, religion, color, ancestry, or national origin. Any such club shall provide on each receipt furnished to a taxpayer a printed statement as follows:

The expenditures covered by this receipt are
nondeductible for state income tax purposes.

(II) The general assembly finds, determines, and declares that the people of the state of Colorado desire to promote and achieve tax equity and fairness among all the state's citizens and further desire to conform to the public policy of nondiscrimination. The general assembly further declares that the provisions of this paragraph (e) are enacted for these reasons and for no other purpose.

(f) For the income tax years commencing on or after January 1, 2000, an amount equal to the charitable contribution deduction allowed by section 170 of the internal revenue code to the extent such deduction includes a contribution of real property to a charitable organization for a conservation purpose for which an income tax credit is claimed pursuant to section 39-22-522;

(g) Repealed.

(h) An amount equal to a business expense for labor services that is deducted pursuant to section 162 (a) (1) of the internal revenue code but that is prohibited from being claimed as a deductible business expense for state income tax purposes pursuant to section 39-22-529.

(3) There shall be subtracted from federal taxable income:

(a) Interest income on obligations of the United States and its possessions to the extent included in federal taxable income;

(b) Interest or dividend income on obligations or securities of any authority, commission, or instrumentality of the United States to the extent included in federal taxable income but exempt from state income taxes under the laws of the United States;

(c) The portion of any gain or loss from the sale or other disposition of property having a higher adjusted basis for Colorado income tax purposes than for federal income tax purposes on the date such property was sold or disposed of in a transaction in which gain

or loss was recognized for purposes of federal income tax that does not exceed such difference in basis, but, if a gain is considered a long-term capital gain for federal income tax purposes, the modification shall be limited to the portion of such gain which is included in federal taxable income;

(d) (I) The portion of any gain received during the taxable year from a qualified sale.

(II) As used in this paragraph (d), "qualified sale" means a sale, in good faith, of real or personal property to a buyer who initiates the transaction to purchase real or personal property of the seller and who had or could have obtained the power to condemn such property, if the transaction was not between persons defined in section 267 (b) of the internal revenue code.

(III) The purpose of this paragraph (d) is, for purposes of Colorado income tax, to accord a seller in a qualified sale the same treatment received by a taxpayer under section 1033 of the internal revenue code relating to gains from involuntary conversion, even though said seller does not qualify under said section 1033 due to the absence of condemnation or the threat or imminence thereof and the buyer of the property purchased initiates the transaction. The executive director shall promulgate such reasonable rules and regulations as are necessary to accomplish the purpose of this paragraph (d).

(e) The amount necessary to prevent the taxation under this article of any annuity or other amount of income or gain which was properly included in income or gain and was taxed under the laws of this state, for a taxable year prior to January 1, 1965, to the taxpayer, or to a decedent by reason of whose death the taxpayer acquired the right to receive the income or gain, or to a trust or estate from which the taxpayer received the income or gain;

(f) The amount of any refund or credit for overpayment of income taxes imposed by this state to the extent included in federal taxable income;

(g) The net operating loss deduction allowed under section 39-22-504;

(h) An amount equal to the difference between the depletion allowance permitted under the internal revenue code for oil shale and an amount which would be permitted as the depletion allowance for oil shale if: The percentage depletion rate were twenty-seven and one-half percent; and the crushing, retorting, condensing, and other processes by which oil, gas, or both oil and gas are removed from oil shale, were deemed to be treatment processes considered as mining;

(i) That portion of wages or salaries paid or incurred for the taxable year, the deduction for which is disallowed by section 280C of the internal revenue code;

(j) Any amount treated as a section 78 dividend under section 78 of the internal revenue code;

(k) Any amount contributed to a medical savings account pursuant to section 39-22-504.7 (2) (e), to the extent such amount is not claimed as a deduction on the taxpayer's federal tax return.

(l) Repealed.

Source: L. 64: R&RE, p. 771, § 1. C.R.S. 1963: § 138-1-38. L. 67: p. 854, §§ 1, 2. L. 77: (3) amended, p. 1795, § 1, effective May 26; (3) R&RE, p. 1784, § 2, effective June 19. L. 78: (3) R&RE, p. 490, § 2, effective March 24. L. 79: (3)(a) amended, p. 1453, § 2, effective March 26. L. 80: (3)(a) amended, p. 727, § 22, effective January 1, 1981. L. 87: Entire section R&RE, p. 1442, § 9, effective June 22. L. 92: (1) amended, p. 2272, § 9, effective April 16; (2)(c) and (2)(d) amended and (2)(e) added, p. 2279, § 3, effective June 1. L. 94: (3)(k) added, p. 2840, § 5, effective January 1, 1995. L. 95: (3)(l) added, p. 1199, § 1, effective May 31. L. 97: (2)(e)(I) amended, p. 304, § 21, effective July 1. L. 99: (2)(f) added, p. 977, § 3, effective August 4. L. 2000: (2)(g) added, p. 1322, § 4, effective August 2. L. 2004: (2)(f) amended, p. 1209, § 91, effective August 4. **Referred 2006:** (2)(h) added, L. 2006, 1st Ex. Sess., p. 1, § 2, effective December 31. **L. 2008:** (2)(e)(I) amended, p. 1604, § 36, effective May 29. **L. 2010:** (2)(g) repealed, (SB 10-212), ch. 412, p. 2032, § 1, effective July 1; (2)(g) repealed, (HB 10-1256), ch. 133, p. 440, § 3, effective August 11.

Editor's note: (1) Amendments to subsection (3) by House Bill 77-1402 and House Bill 77-1519 were harmonized.

(2) Subsection (3)(l)(II) provided for the repeal of subsection (3)(l), effective January 1, 2001. (See L. 95, p. 1199.)

(3) Subsection (2)(h) was enacted by House Bill 06S-1020 at the first extraordinary session of the sixty-fifth general assembly. That bill contained a referendum clause and was approved by a vote of the registered electors of the state of Colorado on November 7, 2006. Subsection (2)(h) was effective upon proclamation of the governor, December 31, 2006. The vote count for the measure was as follows:

FOR:	744,475
AGAINST:	722,651

Cross references: For the legislative declaration contained in the 2008 act amending subsection (2)(e)(I), see section 1 of chapter 341, Session Laws of Colorado 2008.

ANNOTATION

Law reviews. For article, "2006 Immigration Legislation in Colorado", see 35 Colo. Law. 79 (October 2006).

39-22-305. Consolidated returns. (1) An affiliated group of C corporations, as defined in section 1504 of the internal revenue code, may elect to make a consolidated return with respect to the corporate income tax imposed by section 39-22-301 (1) for the taxable year in lieu of separate returns. The making of a consolidated return shall be upon the condition that all C corporations which at any time during the taxable year have been members of the affiliated group consent to be included in such return. The making of a consolidated return shall be considered as such consent. Such election may not be revoked in less than four years unless approved by the executive director.

(2) The executive director shall prescribe such regulations as the executive director may deem necessary in order that the tax liability of any affiliated group of C corporations making a consolidated return and of each C corporation in the group, both during and after the period of affiliation, may be returned, determined, computed, assessed, collected, and adjusted, in such manner as clearly to reflect the income tax liability and the various factors necessary for the determination of such liability and as the executive director may deem necessary in order to prevent avoidance of the tax liability.

Source: L. 64: R&RE, p. 771, § 1. C.R.S. 1963: § 138-1-39. L. 77: Entire section R&RE, p. 1797, § 1, effective May 18. L. 87: (1) amended, p. 1443, § 10, effective June 22. L. 92: Entire section amended, p. 2272, § 10, effective April 16.

ANNOTATION

A combined-consolidated filing is permissible. An affiliated group that is required to file a combined return may also elect to file a consolidated return. This type of return was clearly

allowed under the published statutes and the related department regulations. *Cendant Corp. & Subs. v. Dept. of Rev.*, 226 P.3d 1102 (Colo. App. 2009).

39-22-306. Accounting periods and methods. The provisions of section 39-22-111 shall apply to C corporations to the extent not inconsistent with sections 39-22-301 to 39-22-305.

Source: L. 64: R&RE, p. 771, § 1. C.R.S. 1963: § 138-1-40. L. 87: Entire section amended, p. 1444, § 11, effective June 22. L. 92: Entire section amended, p. 2273, § 12, effective April 16.

39-22-307. Credit allowed for prior payment of impact assistance. (1) For income tax years commencing on or after January 1, 1981, there shall be allowed, as a credit against any taxes imposed by this part 3 on income derived from a new mining, milling, or mining and milling operation or expansion of an existing mining, milling, or mining and milling

operation, an amount equal to the value of eligible contributions by the taxpayer made prior to the commencement of operations by the new operation or by the expansion of an existing operation to assist in solving the impact problems of units of local government resulting from the initiation of a new operation or an expansion of an existing operation. The credit allowed by this section shall be allowed only on a new operation or an expansion of an existing operation located within Colorado which begins actual operations subsequent to June 30, 1980. Such credit shall be based on the ratio of the gross income attributable to such new operation or expansion to the total Colorado gross income multiplied by the Colorado income tax liability for the year for which the credit is claimed.

(2) Eligible contributions, for the purpose of such credit, shall include the donation of property or payments to units of local government for use in the planning or construction or expansion of public facilities, limited to roads, schools, water facilities, sewerage facilities, police and fire protection facilities, and hospitals, which are deemed to be necessitated by the initiation of a new operation or an expansion of an existing operation. In order to qualify as an eligible contribution for credit, the following requirements shall be fulfilled:

(a) Each contribution shall be based on an agreement between the taxpayer and a unit of local government specifying the need for such contribution and its nature, value, and purpose. Such agreement shall be submitted for review to each unit of local government which is impacted by the new operation or the expansion of an existing operation. Each impacted unit of local government may send comments on the agreement to the parties to the agreement and the energy impact assistance advisory committee pursuant to section 34-63-102 (5) (b), C.R.S.

(b) Each contribution must be determined to be eligible for credit, after joint submission by the taxpayer and the unit of local government, by the executive director of the department of local affairs upon the recommendation of the energy impact assistance advisory committee.

(c) Certification of eligibility for credit of a contribution of a specified value must be made by the executive director of the department of local affairs to the executive director of the department of revenue, the unit of local government, and the taxpayer. Certification of eligibility for credit shall not be made to the specified value of any contribution submitted, but to a prorated value of the contribution, if the total of all claims received by the department of local affairs exceeds one hundred thousand dollars.

(3) A taxpayer may claim credit against income tax liability during the first five years of operations by a new operation or an expansion of an existing operation in the amount of the total value of all contributions certified as eligible for credit by submitting with the annual declarations and returns required by section 39-29-112 the certifications of eligibility for such credit. Any unabsorbed credit may not be claimed as a refund or applied as a credit to estimated tax.

Source: L. 80: Entire section added, p. 723, § 17, effective May 1. **L. 94:** (2)(a) amended, p. 1646, § 82, effective May 31.

39-22-308. Credit allowed for purchase of Colorado coal. (1) For income tax years commencing on or after January 1, 1989, but prior to January 1, 2005, there shall be allowed, as a credit against any taxes imposed on income by this part 3, an amount equal to one dollar per ton for each ton of Colorado coal purchased by and delivered to the taxpayer in excess of the number of tons of Colorado coal purchased by and delivered to the taxpayer in the income tax year commencing on or after January 1, 1988. If the amount of the tax credit allowed by this section exceeds the amount of income tax due for the taxable year, the excess amount may be carried forward as a credit against subsequent years' income tax liability for a period not exceeding three years and shall be applied first to the earliest income tax years possible. For purposes of this section, "Colorado coal" means coal mined in Colorado, as certified by the producer of such coal.

(2) (a) Any public or private corporate purchaser who is not liable for or subject to state income tax during the year the coal is purchased and who is otherwise eligible for the credit allowed by subsection (1) of this section may by written agreement transfer such

credit to the producer of the coal. Said producer shall be allowed, as a credit against any taxes imposed on income by this part 3, an amount equal to the amount of credit for which the purchaser would otherwise have been eligible pursuant to subsection (1) of this section. Any such credit shall be subject to any limitations established in subsection (1) of this section. Said producer shall reduce the purchase price of said coal to such corporate purchaser by the amount of the credit so transferred.

(b) The corporate purchaser shall file a copy of the written agreement with the department of revenue. The agreement shall contain, but shall not be limited to, terms stipulating the number of tons of Colorado coal purchased by the corporate purchaser in the 1988 base income tax year and the number of tons of Colorado coal over and above that base amount which is being purchased pursuant to the agreement.

Source: L. 89: Entire section added, p. 1507, § 1, effective April 12. L. 91: (1) amended, p. 1983, § 1, effective April 1.

39-22-309. Tax credit for investment in technologies for recycling plastics. (Repealed)

Source: L. 89: Entire section added, p. 1182, § 4, effective July 1. L. 92: (1) amended, p. 2273, § 11, effective April 16. L. 2004: Entire section repealed, p. 211, § 35, effective August 4.

39-22-310. Legislative declaration - statutory interpretation and construction. It is the intent of the general assembly that, in interpreting or construing the provisions of this part 3, statutes shall be given the strongest weight, then rules and regulations, and then the administrative interpretation or construction of said provisions by the executive director or the department of revenue; the administrative interpretation shall be given no greater weight than the interpretation of the taxpayer regardless of how long-standing such administrative interpretation or construction might be, unless such administrative interpretation or construction is set forth in rules and regulations promulgated by the executive director.

Source: L. 89: Entire section added, p. 1500, § 3, effective July 1, 1990.

SUBPART 2

S CORPORATIONS

39-22-320. Short title - citation. This subpart 2 shall be comprised of sections 39-22-320 to 39-22-330 and may be cited as subpart 2. This subpart 2 shall be known and may be cited as the "Colorado S Corporation Income Tax Act".

Source: L. 92: Entire section added, p. 2260, § 1, effective April 16.

ANNOTATION

Law reviews. For article, "Choice of Entities in Colorado", see 23 Colo. Law. 293 (1994).

39-22-321. Definitions. For the purposes of this subpart 2, unless the context otherwise requires:

(1) "Income attributable to the state" means items of income, loss, deduction, or credit of the S corporation apportioned or allocated to this state pursuant to section 39-22-303.5 or 39-22-303.7.

(2) "Income not attributable to the state" means all items of income, loss, deduction, or credit of the S corporation other than income attributable to the state.

(3) "Post-termination transition period" means that period defined in section 1377 (b) (1) of the internal revenue code.

(4) "Pro rata share" means the portion of any item attributable to an S corporation shareholder for a taxable period determined in the manner provided in, and subject to any election made under, section 1377 (a) or 1362 (e), as the case may be, of the internal revenue code.

(5) "Taxable period" means any taxable year or portion of a taxable year during which a corporation is an S corporation.

Source: L. 92: Entire section added, p. 2260, § 1, effective April 16. L. 2008: (1) amended, p. 966, § 9, effective January 1, 2009.

39-22-322. Taxation of an S corporation and its shareholders. (1) An S corporation shall not be subject to the tax imposed by this article.

(2) For the purposes of section 39-22-104 (1), each shareholder's pro rata share of the S corporation's income attributable to the state and each resident shareholder's pro rata share of the S corporation's income not attributable to the state, all as modified pursuant to section 39-22-323, shall be taken into account by the shareholder in the manner provided in section 1366 of the internal revenue code.

(3) For the purposes of determining the amounts taken into account by the shareholders of an S corporation pursuant to subsection (2) of this section, the amount of any tax imposed on the S corporation under the internal revenue code shall proportionately reduce the S corporation's income attributable to the state and income not attributable to the state.

Source: L. 92: Entire section added, p. 2261, § 1, effective April 16.

39-22-323. Modification and characterization of income. (1) An S corporation's income attributable to the state shall, for the purposes of section 39-22-322, be subject to the modifications provided in section 39-22-304.

(2) Each resident shareholder's pro rata share of the S corporation's income not attributable to the state shall, for the purposes of section 39-22-322 (2), be subject to the modifications provided in section 39-22-104.

(3) The character of any S corporation item taken into account by a shareholder of an S corporation pursuant to section 39-22-322 (2) shall be determined as if such item were received or incurred by the S corporation and not its shareholder.

Source: L. 92: Entire section added, p. 2261, § 1, effective April 16.

39-22-324. Basis and adjustments. The basis in the hands of a shareholder of an S corporation in the stock of the S corporation and any indebtedness of the S corporation to the shareholder shall be determined in the manner provided under the internal revenue code.

Source: L. 92: Entire section added, p. 2261, § 1, effective April 16.

39-22-325. Carryforwards and carrybacks - loss limitation. (1) Carryforwards and carrybacks to and from taxable periods of an S corporation shall be restricted in the manner provided in section 1371 (b) of the internal revenue code.

(2) The aggregate amount of losses or deductions of an S corporation taken into account by a shareholder of the S corporation for a taxable period pursuant to section 39-22-323 (2) shall not exceed such shareholder's combined adjusted basis, as determined pursuant to section 39-22-324, in the stock of the S corporation and any indebtedness of the S corporation to such shareholder.

(3) Any loss or deduction of an S corporation which is disallowed for a taxable period pursuant to subsection (2) of this section shall be treated as incurred by the corporation in the succeeding taxable period with respect to that shareholder.

(4) (a) Any loss or deduction of an S corporation which is disallowed pursuant to subsection (2) of this section for the corporation's last taxable period as an S corporation shall be treated as incurred by a shareholder on the last day of any post-termination transition period.

(b) The aggregate amount of losses and deductions taken into account by a shareholder pursuant to paragraph (a) of this subsection (4) shall not exceed such shareholder's adjusted basis in the stock of the corporation, as such adjusted basis is determined pursuant to section 39-22-324 at the close of the last day of any post-termination transition period and without regard to this subsection (4).

Source: L. 92: Entire section added, p. 2261, § 1, effective April 16.

39-22-326. Part-year residence. For the purposes of this subpart 2, if a shareholder of an S corporation is both a resident and a nonresident of this state during any taxable period, such shareholder's pro rata share of the S corporation's income attributable to the state and income not attributable to the state for the taxable period shall be further prorated between such shareholder's periods of residence and nonresidence during the taxable period, in accordance with the number of days in each period.

Source: L. 92: Entire section added, p. 2262, § 1, effective April 16.

39-22-327. Distributions. A distribution made by an S corporation with respect to its stock to a shareholder shall be taken into account by such shareholder for the purposes of section 39-22-104 to the extent that the distribution is determined to be taxable under the internal revenue code.

Source: L. 92: Entire section added, p. 2262, § 1, effective April 16.

39-22-328. Returns. An S corporation which engages in activity in this state shall be subject to the requirements of section 39-22-601 (2.5).

Source: L. 92: Entire section added, p. 2262, § 1, effective April 16.

39-22-329. Tax credits. (1) For the purposes of section 39-22-108, each resident shareholder shall be considered to have paid a tax imposed on each resident shareholder in an amount equal to each resident shareholder's pro rata share of any net income tax paid by the S corporation to a state which does not measure the income of shareholders of an S corporation by reference to the income of the S corporation. For the purposes of this section, the term "net income tax" means any tax imposed on, or measured by, an S corporation's net income.

(2) Each shareholder of an S corporation shall be allowed a credit against the tax imposed by section 39-22-104 in an amount equal to each shareholder's pro rata share of the tax credits described in sections 39-30-103.5 to 39-30-105.6 earned by the S corporation.

Source: L. 92: Entire section added, p. 2263, § 1, effective April 16.

39-22-330. Uniformity of application and construction. This subpart 2 shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this subpart 2 among those states which enact the model S corporation income tax act.

Source: L. 92: Entire section added, p. 2263, § 1, effective April 16.

PART 4

ESTATES AND TRUSTS

39-22-401. Income of a resident estate or trust for purposes of Colorado income tax. (1) The income of a resident estate or trust subject to the tax imposed by this article shall be its federal taxable income as determined pursuant to section 63 of the internal revenue code with the following modifications:

(a) There shall be added or subtracted the modifications described in section 39-22-104 to the extent such items are excluded from federal distributable net income of the estate or trust.

(b) There shall be added or subtracted the share of the estate or trust in the Colorado fiduciary adjustment determined under section 39-22-402.

Source: L. 64: R&RE, pp. 656, 771, §§ 14, 1. C.R.S. 1963: § 138-1-45. L. 78: (1)(a) amended, p. 485, § 8, effective May 5. L. 87: Entire section R&RE, p. 1444, § 12, effective June 22.

39-22-402. Share of a resident estate, trust, or beneficiary in Colorado fiduciary adjustments. (1) (a) An adjustment shall be made in determining the federal taxable income subject to tax by Colorado of a resident estate or trust under section 39-22-401, or the federal taxable income subject to tax by Colorado of a resident beneficiary of any estate or trust under section 39-22-104, in the amount of the share of each in the Colorado fiduciary adjustment as determined in this section.

(b) Repealed.

(2) The Colorado fiduciary adjustment shall be the net amount of the modifications described in section 39-22-104, except to the extent such items are excluded from federal distributable net income of the estate or trust.

(3) (a) The respective shares of an estate or trust and its beneficiaries, including, solely for the purpose of this allocation, nonresident beneficiaries, in the Colorado fiduciary adjustment shall be in proportion to their respective shares of federal distributable net income of the estate or trust.

(b) If the estate or trust has no federal distributable net income for the taxable year, the share of each beneficiary in the Colorado fiduciary adjustment shall be in proportion to his share of the estate or trust income for such year, under local law or the governing instrument, which is required to be distributed currently and any other amounts of such income distributed in such year. Any balance of the Colorado fiduciary adjustment shall be allocated to the estate or trust.

(4) The executive director may, by regulation, establish such other method of determining to whom the items comprising the fiduciary adjustment shall be attributed, as may be appropriate and equitable. Such method may be used by the fiduciary in his discretion whenever the allocation of the fiduciary adjustment, pursuant to subsection (3) of this section, would result in an inequity which is substantial both in amount and in relation to the amount of the fiduciary adjustment.

Source: L. 64: R&RE, p. 772, § 1. C.R.S. 1963: § 138-1-46. L. 67: p. 850, §§ 1, 2. L. 77: (2) amended, p. 1784, § 3, effective May 19. L. 87: (1)(a) and (2) amended and (1)(b) repealed, pp. 1444, 1457, §§ 13, 31, effective June 22.

39-22-403. Income of a nonresident estate or trust subject to income tax. (1) In the case of a nonresident estate or trust, the tax imposed by section 39-22-104 shall be apportioned in the ratio of the Colorado-source federal taxable income to the total federal taxable income, both modified as provided in section 39-22-104.

(2) Colorado-source federal taxable income of an estate or trust means:

(a) Its share of the Colorado-source federal distributable net income as determined in section 39-22-404; and

(b) Its share of any Colorado-source income, gain, loss, and deduction recognized for federal income tax purposes but excluded from the definition of federal distributable net income of the estate or trust as determined under section 39-22-109, as in the case of a nonresident individual, and modified as provided in section 39-22-104.

Source: L. 64: R&RE, p. 773, § 1. C.R.S. 1963: § 138-1-47. L. 87: IP(1), (1)(b), and (1)(c) amended and (1)(d) repealed, pp. 1444, 1457, §§ 14, 31, effective June 22. L. 88: Entire section R&RE, p. 1314, § 8, effective May 29.

39-22-404. Share of a nonresident estate, trust, or beneficiary in income from sources within Colorado. (1) The share of a nonresident estate or trust under section 39-22-403 and the share of a nonresident beneficiary of any estate or trust under section 39-22-109 in estate or trust income, gain, loss, and deduction from sources within Colorado shall be determined as follows:

(a) There shall be determined the items of income, gain, loss, and deduction derived from sources within Colorado which enter into the definition of federal distributable net income of the estate or trust for the taxable year, including such items from another estate or trust of which the first estate or trust is a beneficiary. Such determination of source shall be made in accordance with the applicable rules of section 39-22-109 as in the case of a nonresident individual.

(b) There shall be added or subtracted the modifications described in section 39-22-104, to the extent relating to items of income, gain, loss, and deduction, derived from sources within Colorado, which enter into the definition of federal distributable net income, including such items from another estate or trust of which the first estate or trust is a beneficiary. No modification shall be made under this paragraph (b) which has the effect of duplicating an item already reflected in the definition of federal distributable net income.

(c) (I) The amounts determined under paragraphs (a) and (b) of this subsection (1) shall be allocated among the estate or trust and its beneficiaries, including, solely for the purpose of this allocation, resident beneficiaries, in proportion to their respective shares of federal distributable net income.

(II) The amounts so allocated shall have the same character under this article as for federal income tax purposes.

(2) (a) If the estate or trust has no federal distributable net income for the taxable year, the share of each beneficiary, including, solely for the purpose of this allocation, resident beneficiaries, in the net amount, determined under paragraphs (a) and (b) of subsection (1) of this section, shall be in proportion to his share of the estate or trust income for such year, under local law or the governing instrument which is required to be distributed currently and any other amounts of such income distributed in such year. Any balance of such net amount shall be allocated to the estate or trust.

(b) The executive director may, by regulation, establish such other method or methods of determining the respective shares of the beneficiaries and of the estate or trust in its income derived from sources within Colorado and in the modifications related thereto as may be appropriate and equitable. Such method may be used by the fiduciary in his discretion whenever the allocation of such respective shares under subsection (1) of this section or paragraph (a) of this subsection (2) would result in an inequity which is substantial both in amount and in relation to the total amount of the modifications referred to in paragraph (b) of subsection (1) of this section.

Source: L. 64: R&RE, p. 774, § 1. C.R.S. 1963: § 138-1-48. L. 87: IP(1), (1)(a), (1)(b), (1)(c)(I), and (2) amended, p. 1445, § 15, effective June 22. L. 88: IP(1), (1)(a), and (1)(b) amended, p. 1314, § 9, effective May 29.

39-22-405. Colorado exemption and federal income tax modification of nonresident estate or trust. (Repealed)

Source: L. 64: R&RE, p. 775, § 1. C.R.S. 1963: § 138-1-49. L. 87: Entire section repealed, p. 1457, § 31, effective June 22.

39-22-406. Special rule for accumulation distributions. (Repealed)

Source: L. 64: R&RE, p. 775, § 1. C.R.S. 1963: § 138-1-50. L. 83: Entire section repealed, p. 1515, § 11, effective January 1, 1984.

39-22-407. Accounting periods and methods. The provisions of section 39-22-111 shall apply to trusts and estates to the extent not inconsistent with sections 39-22-401 to 39-22-404.

Source: L. 64: R&RE, p. 775, § 1. C.R.S. 1963: § 138-1-51. L. 83: Entire section amended, p. 1515, § 10, effective January 1, 1984. L. 87: Entire section amended, p. 1446, § 16, effective June 22.

PART 5**SPECIAL RULES**

39-22-501. Taxation of regulated investment companies. (1) (a) For purposes of this article, a “regulated investment company” shall have the same meaning as set forth in section 851 of the internal revenue code.

(b) For purposes of this article, the “net income” of a regulated investment company in each year in which the corporation is taxed as a regulated investment company for federal income tax purposes shall be the “investment company taxable income” of such corporation, adjusted as provided in section 39-22-304 (2) and (3).

(2) (a) For purposes of this article, a “captive regulated investment company” means a regulated investment company of which the shares or beneficial interests are not regularly traded on an established securities market and of which more than fifty percent of the voting power or value of the beneficial interests or shares are owned or controlled, directly, indirectly, or constructively, by a single entity that is:

(I) Treated as an association taxable as a corporation under the internal revenue code; and

(II) Not exempt from federal income tax pursuant to the provisions of section 501 (a) of the internal revenue code.

(b) Any voting stock in a regulated investment company that is held in a segregated asset account of a life insurance corporation, as described in section 817 of the internal revenue code, shall not be taken into account for purposes of determining whether a regulated investment company is a captive regulated investment company.

Source: L. 64: R&RE, p. 776, § 1. C.R.S. 1963: § 138-1-56. L. 2009: Entire section amended, (HB 09-1093), ch. 75, p. 269, § 2, effective April 2.

Cross references: For the legislative declaration contained in the 2009 act amending this section, see section 1 of chapter 75, Session Laws of Colorado 2009.

39-22-502. Adjustment to basis of shares of regulated investment company. (Repealed)

Source: L. 64: R&RE, p. 777, § 1. C.R.S. 1963: § 138-1-57. L. 91: Entire section repealed, p. 1986, § 1, effective April 20.

39-22-503. Taxation of real estate investment trusts - definitions. (1) (a) For purposes of this article, a “real estate investment trust” shall have the same meaning as set forth in section 856 of the internal revenue code.

(b) For purposes of this article, the “net income” of a real estate investment trust in each year in which the trust is taxed as a real estate investment trust for federal income tax

purposes shall be the “real estate investment trust taxable income” of the trust as computed for federal income tax purposes and adjusted as provided in section 39-22-304 (2) and (3).

(2) (a) For purposes of this article, a “captive real estate investment trust” means a real estate investment trust of which the shares or beneficial interests are not regularly traded on an established securities market and of which more than fifty percent of the voting power or value of the beneficial interests or shares are owned or controlled, directly, indirectly, or constructively, by a single entity that is:

(I) Treated as an association taxable as a corporation under the internal revenue code; and

(II) Not exempt from federal income tax pursuant to the provisions of section 501 (a) of the internal revenue code.

(b) A “captive real estate investment trust” shall not include a real estate investment trust that is intended to be regularly traded on an established securities market and that satisfies the requirements of section 856 (a) (5) and (a) (6) of the internal revenue code by reason of section 856 (h) (2) of the internal revenue code; except that, if such real estate investment trust does not become regularly traded on an established securities market within one year of the date on which it first becomes a real estate investment trust, such real estate investment trust shall be deemed to be a captive real estate investment trust.

(3) For purposes of this section, the constructive ownership rules of section 318 (a) of the internal revenue code, as modified by section 856 (d) (5) of the internal revenue code, shall apply in determining the ownership of stock, assets, or net profits of any person.

(4) For purposes of this section, unless the context otherwise requires:

(a) “Association taxable as a corporation under the internal revenue code” shall not include:

(I) Any real estate investment trust other than a captive real estate investment trust;

(II) Any qualified real estate investment trust subsidiary other than a qualified real estate investment trust subsidiary of a captive real estate investment trust;

(III) Any listed Australian property trust; or

(IV) Any qualified foreign entity.

(b) “Australian property trust” means an Australian unit trust registered as a managed investment scheme under the Australian corporations act in which the principal class of units is listed on a recognized stock exchange in Australia and is regularly traded on an established securities market or an entity organized as a trust, provided that a listed Australian property trust owns or controls, directly or indirectly, seventy-five percent or more of the voting power or value of the beneficial interests or shares of such trust.

(c) “Qualified foreign entity” means a corporation, trust, association, or partnership that is organized outside the laws of the United States and that satisfies the following criteria:

(I) At least seventy-five percent of the entity’s total asset value at the close of its taxable year is represented by real estate assets as defined in section 856 (c) (5) (B) of the internal revenue code, cash and cash equivalents, or United States government securities;

(II) The entity is not subject to tax on amounts distributed to its beneficial owners or is exempt from entity-level taxation;

(III) The entity distributes at least eighty-five percent of its taxable income, as computed in the jurisdiction in which it is organized, to the holders of its shares or certificates of beneficial interest on an annual basis;

(IV) Not more than ten percent of the voting power or value in such entity is held, directly, indirectly, or constructively, by a single entity or individual, or the shares or beneficial interests of such entity are regularly traded on an established securities market; and

(V) The entity is organized in a country that has a tax treaty or agreement with the United States.

(d) “Qualified real estate investment trust subsidiary” has the same meaning as set forth in section 856 (i) of the internal revenue code.

Source: L. 64: R&RE, p. 777, § 1. C.R.S. 1963: § 138-1-58. L. 91: Entire section amended, p. 1986, § 2, effective April 20. L. 2009: Entire section amended, (HB 09-1093), ch. 75, p. 269, § 3, effective April 2.

Cross references: For the legislative declaration contained in the 2009 act amending this section, see section 1 of chapter 75, Session Laws of Colorado 2009.

39-22-504. Net operating losses. (1) A net operating loss deduction shall be allowed in the same manner that it is allowed under the internal revenue code except as otherwise provided in this section. The amount of the net operating loss that may be carried forward and carried back for Colorado income tax purposes shall be that portion of the federal net operating loss allocated to Colorado under this article in the taxable year that the net operating loss is sustained.

(2) With respect to individuals, estates, and trusts:

(a) A net operating loss incurred in a taxable year beginning prior to January 1, 1987, may be carried forward the same number of years a federal net operating loss may be carried forward. Such net operating losses may not be carried back to an earlier tax year.

(b) Net operating losses incurred in taxable years beginning on or after January 1, 1987, may be carried back to the same years as is a federal net operating loss incurred in such year; except that no such loss may be carried to a taxable year beginning on or after January 1, 1987. Such losses may not be carried forward to subsequent tax years.

(3) Net operating losses of corporations may be carried forward for the same number of years as allowed for a federal net operating loss. Net operating losses of corporations may not be carried back to an earlier tax year.

(4) If a financial institution suffers a net operating loss for any taxable year beginning on or after January 1, 1984, the amount of the unused net operating loss may be carried forward to each of the fifteen years following the taxable year of such loss. For the purposes of this subsection (4), "financial institution" means any institution to which section 585, 586, or 593 of the internal revenue code applies.

(5) No corporation may carry forward a net operating loss to an income tax year commencing prior to January 1, 2009, if, for such year, the corporation uses a different method of allocating or apportioning income from the one it used in the period in which the loss occurred, unless such different method is approved by the executive director. A corporation may carry forward a net operating loss to any income tax year commencing on or after January 1, 2009, regardless of the method of allocating or apportioning income for such year.

(6) (a) Notwithstanding any other provision of this section, the maximum amount of net operating loss that a corporation may subtract from federal taxable income pursuant to section 39-22-304 (3) (g) for a tax year commencing on or after January 1, 2011, but prior to January 1, 2014, is two hundred fifty thousand dollars.

(b) All net operating losses may be carried forward one additional year for each tax year that a corporation is prohibited pursuant to paragraph (a) of this subsection (6) from subtracting a portion of such net operating losses from the corporation's federal taxable income.

(c) An amount equal to the amount of all net operating losses that a corporation is prohibited pursuant to paragraph (a) of this subsection (6) from subtracting from federal taxable income multiplied by a rate of interest equal to three and one-quarter percent per annum for the period during which such net operating losses are prohibited shall be added to the allowable net operating loss that is carried forward by the corporation, and, for the purpose of section 39-22-304 (3) (g), shall be considered net operating loss.

Source: L. 64: R&RE, p. 777, § 1. C.R.S. 1963: § 138-1-59. L. 77: (5) added, p. 1795, § 2, effective May 26. L. 83: (1) amended and (2), (3), and (5)(a) repealed, p. 2097, §§ 4, 5, effective January 1, 1984. L. 87: (6) added, p. 1458, § 1, effective May 4; entire section R&RE, p. 1446, § 17, effective June 22. L. 88: (5) added, p. 1315, § 10, effective May 29. L. 2008: (5) amended, p. 966, § 10, effective January 1, 2009. L. 2010: (6) added, (HB 10-1199), ch. 13, p. 67, § 2, effective February 24.

Editor's note: (1) House Bill 87-1243 adding subsection (6) was superseded by House Bill 87-1331 and included in House Bill 87-1331 as (4).

(2) Section 586 of the internal revenue code, referenced in subsection (4), was repealed, effective October 22, 1986, but has been left in for historical purposes.

ANNOTATION

Section was available to banks taxed under former C.R.S. 1963, § 138-1-55. In re Golden State Bank v. Dolan, 37 Colo. App. 29, 543 P.2d 1307 (1975) (decided under former law).

39-22-504.5. Short title. Sections 39-22-504.5 to 39-22-504.7 shall be known and may be cited as the “Medical Savings Account Act of 1994”.

Source: L. 86: Entire section added, p. 1121, § 1, effective June 23. **L. 94:** Entire section amended, p. 2840, § 6, effective January 1, 1995.

39-22-504.6. Definitions. As used in sections 39-22-504.5 to 39-22-504.7, unless the context otherwise requires:

- (1) “Account administrator” means:
 - (a) A state chartered bank, savings and loan association, credit union, or trust company authorized to act as a fiduciary and under the supervision of the financial institutions bureau of the United States department of commerce;
 - (b) A national banking association, federal savings and loan association, or credit union authorized to act as a fiduciary in this state;
 - (c) An insurance company; or
 - (d) An employer if such employer maintains a self-insured health plan meeting the requirements of the federal “Employee Retirement Income Security Act of 1974”, as amended.

(1.3) “Account holder” means an employee on whose behalf a medical savings account is established.

- (2) “Dependent child” means any person who is:
 - (a) Under the age of twenty-one years;
 - (b) Legally entitled to or the subject of a court order for the provision of proper or necessary subsistence, education, medical care, or any other care necessary for his or her health, guidance, or well-being and who is not otherwise emancipated, self-supporting, married, or a member of the armed forces of the United States; or
 - (c) So mentally or physically incapacitated that he or she cannot provide for himself or herself.

(2.4) “Eligible medical expense” means any medical expense that is deductible for purposes of section 213 (d) of the internal revenue code.

(2.5) “Employee” means the individual for whose benefit a medical savings account is established.

(2.6) “Employer” means a person or entity employing one or more persons in this state, excluding the federal government.

(3) “Medical savings account” means an account established to pay the eligible medical expenses of an account holder and his or her spouse and dependent children, if any.

(3.5) “Qualified higher deductible health plan” means a health coverage policy, certificate, or contract that provides for the payment of covered benefits that exceed the deductible, which shall be at least one thousand five hundred dollars but no more than two thousand two hundred fifty dollars for individual coverage or at least three thousand dollars but no more than four thousand five hundred dollars for family coverage, and that is purchased by an employer for the benefit of an employee who makes deposits into a medical savings account.

(4) (Deleted by amendment, L. 94, p. 2840, § 7, effective January 1, 1995.)

Source: L. 86: Entire section added, p. 1121, § 1, effective June 23. **L. 88:** (4) amended, p. 419, § 16, effective April 11. **L. 89:** (4) amended, p. 622, § 19, effective July 1. **L. 94:** Entire section amended, p. 2840, § 7, effective January 1, 1995. **L. 2000:** (3.5) amended, p. 172, § 2, effective January 1, 2001.

Cross references: For the federal "Employee Retirement Income Security Act of 1974", see 93 Pub.L. 406.

39-22-504.7. Medical savings accounts - establishment - contributions - distributions - restrictions - taxation - portability. (1) (a) **Establishment of accounts.** On and after January 1, 1995, an employer may offer to establish medical savings accounts.

(b) An employee on whose behalf a medical savings account has not been established by his or her employer may establish such an account on his or her own behalf.

(2) (a) Each year an employer may contribute to an employee's medical savings account an amount that does not exceed three thousand dollars.

(b) If an employer establishes a medical savings account for an employee but contributes less than the maximum set forth in paragraph (a) of this subsection (2), the employee may contribute the difference in accordance with the provisions of paragraph (d) of this subsection (2).

(c) An employee who establishes his or her own medical savings account may contribute to such account an amount that does not exceed the maximum set forth in paragraph (a) of this subsection (2). Any such contribution is to be made in accordance with the provisions of paragraph (d) of this subsection (2).

(d) **Employee contributions - pretax.** (I) All employee contributions to medical savings accounts are made on a pretax basis, pursuant to section 39-22-104.6. Such contributions are subject to the same limitations as employer contributions.

(II) An employee shall elect to make contributions to his or her medical savings account by signing a written election. Such election is to be in the form prescribed by the executive director of the department of revenue and is to be signed prior to the date the employer withholds the first contribution.

(e) **Employer contributions - tax deduction.** Employer contributions to employee medical savings accounts constitute a deduction from the employer's federal taxable income, pursuant to sections 39-22-104 (4) (h) and 39-22-304 (3) (k).

(3) **Distributions.** (a) An account holder shall submit documentation of eligible medical expenses paid during the tax year to the account administrator, and the account administrator shall reimburse the account holder for such expenses.

(b) Moneys may be distributed from a medical savings account only for the purpose of:

(I) Reimbursing the eligible medical expenses of the account holder or his or her spouse or dependent child;

(II) Cashing out the balance in the account of a deceased account holder; or

(III) (A) Cashing out an account holder's prior years' balance.

(B) An account holder may withdraw the balance in his or her account for any reason if such withdrawal occurs after the end of the year in which the moneys were contributed; however, such distributed moneys are subject to state income tax pursuant to subsection (6) of this section.

(4) (Deleted by amendment, L. 94, p. 2841, § 8, effective January 1, 1995.)

(5) **Restrictions.** An account holder may not use account moneys to fund a policy that covers the deductible for a qualified higher deductible health plan, as defined in section 39-22-504.6 (3.5).

(6) **Taxation of account moneys.** (a) Account moneys, including interest income, are not to be taxed as Colorado adjusted gross income if they are:

(I) In an employee's medical savings account; or

(II) Withdrawn to pay eligible medical expenses.

(b) Account moneys are to be taxed as Colorado adjusted gross income when such moneys are withdrawn for purposes other than the payment of eligible medical expenses.

(c) Upon the death of the account holder, the account principal, as well as any accumulated interest, is to be distributed to and taxed as part of the decedent's estate, as provided by law.

(7) **Portability.** An account holder is the owner of his or her medical savings account and may change the account administrator of such account upon leaving the employ of his or her employer.

Source: L. 86: Entire section added, p. 1122, § 1, effective May 23. L. 94: Entire section amended, p. 2841, § 8, effective January 1, 1995.

Cross references: For other provisions concerning adjustments to federal taxable income, see § 39-22-104.

39-22-505. Oil and gas producers. (Repealed)

Source: L. 64: R&RE, p. 778, § 1. C.R.S. 1963: § 138-1-60. L. 71: p. 1252, § 1. L. 77: Entire section repealed, p. 1855, § 13, effective January 1, 1978.

39-22-506. Tentative carry-back adjustment - application - allowance. (Repealed)

Source: L. 67: p. 851, §§ 1, 2. C.R.S. 1963: § 138-1-61. L. 83: Entire section repealed, p. 2097, § 5, effective January 1, 1984.

39-22-507. Credits against tax - employer expenses - work incentive programs. (Repealed)

Source: L. 76: Entire section added, p. 781, § 1, effective May 10. L. 78: Entire section repealed, p. 275, § 101, effective May 23.

39-22-507.5. Credits against tax - investment in certain property. (1) Except as otherwise provided in this section, there shall be allowed to any person as a credit against the tax imposed by this article, for income tax years commencing on or after January 1, 1979, an amount equal to the total of:

(a) Investment tax credit carryovers claimed by such person for such taxable year;

(b) Ten percent of that part of the credit allowed for the same income tax year by section 38 of the internal revenue code, as determined under the provisions of section 46 of the internal revenue code, without regard to the limitations imposed by said section 38, to the extent such part of such credit is determined by reference to property which is used in Colorado; and

(c) Investment tax credit carrybacks claimed by such person for such taxable year.

(1.5) For taxable years beginning on or after January 1, 1987, the provisions of paragraph (b) of subsection (1) of this section shall apply only with respect to taxes imposed by part 3 of this article.

(2) The executive director shall promulgate regulations which will prescribe the extent to which property must be used in Colorado to qualify for the credit allowed under the provisions of subsection (1) of this section, which regulations shall include a method or methods of determining what portion of the property shall qualify in the case of property which is used both within and without Colorado.

(3) The credit allowed by this section for any income tax year shall not exceed:

(a) The taxpayer's actual tax liability for the income tax year to the extent such liability does not exceed five thousand dollars; plus

(b) Twenty-five percent of that portion of said tax liability for the income tax year which exceeds five thousand dollars.

(4) Repealed.

(5) In the case of a "controlled group of corporations", as defined in section 1563 (a) of the internal revenue code, the five thousand dollars specified in subsection (3) of this section shall be apportioned among the members of the controlled group as they may elect. The election shall apply to the income tax year of the members of the controlled group ending with or including a common December 31. Should such members fail to agree on an allocation of the five thousand dollars, said five thousand dollars shall be divided equally among all members of the controlled group.

(6) In the case of a regulated investment company or a real estate investment trust, the five thousand dollars referred to in subsection (3) of this section shall be reduced to an

amount which shall be five thousand dollars multiplied by the taxable income for the income tax year and divided by the taxable income for the income tax year plus the amount of the deduction for dividends paid.

(7) If the amount of the credit allowed by paragraph (b) of subsection (1) of this section exceeds the amount of the limitation imposed by subsection (3) of this section reduced by the credit allowed by paragraph (a) of subsection (1) of this section for any income tax year, referred to in this subsection (7) as the “unused credit year”, such excess shall be:

(a) An investment tax credit carryback to each of the three income tax years preceding the unused credit year; except that no credit shall be carried back to an income tax year commencing prior to January 1, 1979; and

(b) An investment tax credit carryover to each of the seven income tax years following the unused credit year.

(8) No carryover or carryback of unused investment credit will be allowed in the case of a taxable cooperative as defined in section 1381 (a) of the internal revenue code.

(9) (a) For any income tax year beginning on or after January 1, 1979, if any taxpayer is required to redetermine the credit allowed by section 38 of the internal revenue code due to the provisions of section 47 of the internal revenue code, such taxpayer must redetermine the credit allowed by subsection (1) of this section for the same income tax year. If the redetermination results in a reduction of the credit allowed by this section for the income tax year or for any income tax year to which the credit was carried back or carried forward, the reduction shall constitute an increase in the tax imposed by this article for the income tax year during which the disposition or reclassification of the nature of the property occurs, and the amount of any unused investment tax credit carryback or carryover must be redetermined as appropriate. The increase in tax shall not be included as tax liability for the purposes of subsection (3) of this section.

(b) If, during any income tax year which commences on or after May 26, 1983, “section 38 property” which was first placed in service by the taxpayer in a taxable year beginning on or after January 1, 1982, is disposed of by or otherwise ceases to be such property with respect to the taxpayer before the close of the property’s recapture period, as determined for federal income tax purposes, the credit allowed by this section and the decrease, if any, in the investment tax credit carryback or carryover with respect to the property shall be redetermined in accordance with the recapture percentage table contained in:

(I) Section 47 (a) of the internal revenue code, as it existed immediately prior to the enactment of the federal “Revenue Reconciliation Act of 1990”, for such property which was disposed of by or otherwise ceased to be such property with respect to the taxpayer prior to January 1, 1991; or

(II) Section 50 (a) of the internal revenue code for such property which is disposed of by or otherwise ceases to be such property with respect to the taxpayer on or after January 1, 1991.

(10) and (11) Repealed.

(12) In lieu of the amount of the investment tax credit allowed by subsection (1) of this section, a person who has invested in property used in an enterprise zone, as designated pursuant to section 39-30-103, shall be allowed a credit in the amount designated in section 39-30-104, subject to the terms and conditions of that section.

Source: **L. 79:** Entire section added, p. 1441, § 28, effective July 3. **L. 80:** (10) added, p. 724, § 18, effective May 1. **L. 81:** (11) added, p. 1871, § 3, effective June 29. **L. 82:** (1)(b) amended, p. 565, § 1, effective March 17. **L. 83:** (9) amended, p. 1514, § 8, effective May 26. **L. 86:** (1)(b) amended, p. 1124, § 1, effective April 3; (12) added, p. 1142, § 2, effective July 1. **L. 87:** (1)(b), (5), and (8) amended, (1.5) added, and (4), (10), and (11) repealed, pp. 1447, 1457, §§ 18, 31, effective June 22. **L. 91:** (1)(b) and (9)(b) amended, p. 1987, § 5, effective April 20. **L. 2004:** (3)(a) and (9)(a) amended, p. 211, § 36, effective August 4. **L. 2007:** (3)(a) and (9)(a) amended, p. 352, § 7, effective August 3.

39-22-507.6. Credits against corporate tax - investment in certain property.

(1) Except as otherwise provided in this section, there shall be allowed to any person as a credit against the tax imposed by part 3 of this article, for income tax years commencing on or after January 1, 1988, an amount equal to the total of:

(a) Investment tax credit carryovers claimed by such person for such taxable year; and
(b) Ten percent of that part of the credit that would have been allowed for the same income tax year by section 38 of the internal revenue code, as determined under the provisions of subsection (a) of section 46 of the internal revenue code without regard to the limitations imposed by said section 38, had section 49 of the internal revenue code not been enacted, to the extent such part of such credit is determined by reference to property which is used in Colorado. The references in this paragraph (b) to sections 38, 46, and 49 of the internal revenue code mean sections 38, 46, and 49 of the internal revenue code as they existed immediately prior to the enactment of the federal "Revenue Reconciliation Act of 1990".

(2) The executive director shall promulgate regulations which will prescribe the extent to which property must be used in Colorado to qualify for the credit allowed under the provisions of subsection (1) of this section, which regulations shall include a method or methods of determining what portion of the property shall qualify in the case of property which is used both within and without Colorado.

(3) The credit allowed by this section for any income tax year shall not exceed the taxpayer's actual tax liability for the income tax year to the extent that the liability does not exceed one thousand dollars.

(4) In the case of a "controlled group of corporations", as defined in section 1563 (a) of the internal revenue code, the one thousand dollars specified in subsection (3) of this section shall be apportioned among the members of the controlled group as they may elect. The election shall apply to the income tax year of the members of the controlled group ending with or including a common December 31. Should such members fail to agree on an allocation of the one thousand dollars, said one thousand dollars shall be divided equally among all members of the controlled group.

(5) If the amount of the credit allowed by paragraph (b) of subsection (1) of this section exceeds the amount of the limitation imposed by subsection (3) of this section reduced by the credit allowed by paragraph (a) of subsection (1) of this section for any income tax year, referred to in this subsection (5) as the "unused credit year", such excess shall be an investment tax credit carryover to each of the three income tax years following the unused credit year.

(6) The limitations on the credits allowed by this section shall be reduced by any credit allowed by section 39-22-507.5 for the same tax year.

Source: L. 87: Entire section added, p. 1447, § 19, effective June 22. L. 91: (1)(b) amended, p. 1988, § 6, effective April 20. L. 2007: (3) amended, p. 352, § 8, effective August 3.

39-22-508. Credit for property taxes attributable to pollution control property. (Repealed)

Source: L. 78: Entire section added, p. 470, § 4, effective July 1. L. 79: Entire section amended and (5) added, pp. 1454, 1456, §§ 1, 4, effective June 22. L. 81: (4) amended and (5) R&RE, p. 1872, §§ 7, 8, effective June 29. L. 96: (4) repealed, p. 1242, § 102, effective August 7. L. 2004: Entire section repealed, p. 212, § 37, effective August 4.

39-22-508.1. Short title. (Repealed)

Source: L. 78: Entire section added, p. 497, § 1, effective July 1. L. 79: Entire section amended, p. 1442, § 29, effective July 3. L. 2007: Entire section repealed, p. 353, § 11, effective August 3.

39-22-508.2. Definitions - construction of terms. (Repealed)

Source: **L. 78:** Entire section added, p. 497, § 1, effective July 1; (3)(b) amended, p. 275, § 102, effective May 23. **L. 79:** (3)(b) and (5)(b) amended, p. 1443, § 30, effective July 3. **L. 89:** (2)(c) added, p. 1522, § 6, effective June 7. **L. 90:** (7) amended, p. 455, § 35, effective April 18. **L. 92:** IP(2)(c) amended, p. 2220, § 2, effective May 29. **L. 96:** IP(2)(c) and (2)(c)(I) amended, p. 1130, § 6, effective July 1. **L. 2007:** Entire section repealed, p. 353, § 11, effective August 3.

39-22-508.3. Special credit available - new business facility - new employees. (Repealed)

Source: **L. 78:** Entire section added, p. 502, § 1, effective July 1. **L. 79:** (1) amended, p. 1443, § 31, effective July 3. **L. 86:** (5) added, p. 1142, § 3, effective July 1. **L. 87:** (1) amended, p. 1448, § 20, effective June 22. **L. 2007:** Entire section repealed, p. 353, § 11, effective August 3.

39-22-508.4. Election to defer commencement of credit. (Repealed)

Source: **L. 78:** Entire section added, p. 502, § 1, effective May 5. **L. 2007:** Entire section repealed, p. 353, § 11, effective August 3.

39-22-508.5. Effect of transfers of new business facilities. (Repealed)

Source: **L. 78:** Entire section added, p. 503, § 1, effective May 5. **L. 89:** (4) amended, p. 1500, § 4, effective July 1, 1990. **L. 2007:** Entire section repealed, p. 353, § 11, effective August 3.

39-22-508.6. Effect of termination of enterprise or facility. (Repealed)

Source: **L. 78:** Entire section added, p. 504, § 1, effective May 5. **L. 2007:** Entire section repealed, p. 353, § 11, effective August 3.

39-22-508.7. Effective date - termination date. (Repealed)

Source: **L. 78:** Entire section added, p. 497, § 1, effective May 5. **L. 79:** Entire section repealed, p. 1443, § 32, effective July 3.

39-22-509. Mass transit and ridesharing arrangements - employer deductions.
(1) There shall be allowed to corporate employers a deduction from Colorado gross income, to the extent not previously deducted in arriving at Colorado gross income, equal to the employer's contribution to:

(a) (I) Free or partially subsidized ridesharing arrangements for employees, including, but not limited to, providing vehicles for such arrangements, cash incentives (not to exceed the value of such transportation) for participation in ridesharing arrangements, and the payment of all or part of the administrative cost incurred in organizing, establishing, or administering a ridesharing program.

(II) For the purposes of this section, "ridesharing arrangement" means the vehicular transportation of passengers traveling together primarily to and from such passengers' places of business or work or traveling together on a regularly scheduled basis with a commonality of purposes if the vehicle used in such transportation is not operated for profit by an entity primarily engaged in the transportation business and if no charge is made therefor other than that reasonably calculated to recover the direct and indirect costs of the "ridesharing arrangement", including, but not limited to, a reasonable incentive to maximize occupancy of the vehicle. However, nothing in this subparagraph (II) shall be

construed as excluding from this definition an arrangement by an employer engaged in the transportation business who provides ridesharing arrangements for its employees. The term includes “ridesharing arrangements” commonly known as carpools and vanpools; except that this term does not include school transportation vehicles operated by elementary and secondary schools when they are operated for the transportation of children to or from school or on school-related events.

(b) Free or partially subsidized mass transit tickets, tokens, passes, or fares for use by employees in going to and returning from their places of employment.

Source: L. 79: Entire section added, p. 1561, § 27, effective June 20. L. 80: IP(1) amended, p. 728, § 28, effective May 1. L. 87: IP(1) amended, p. 1448, § 21, effective June 22. L. 2004: (1)(a) amended, p. 905, § 30, effective May 21.

39-22-510. State-employed chaplains - designation of rental allowance. (1) In the case of a chaplain, “salary” means the amount of money or credit received as compensation for services rendered, exclusive of mileage, traveling allowances, and other sums received for actual and necessary expenses incurred in the performance of the state’s business.

(2) The state of Colorado, being a tax-exempt entity, designates a portion of the annual compensation of every chaplain who is employed full-time by this state, in the amount of four thousand two hundred dollars, as the payment of a rental allowance for the purpose of renting or providing a home for the chaplain and his family when such rent or home is not provided by the state.

Source: L. 79: Entire section added, p. 1457, § 1, effective July 1.

39-22-511. Credit against Colorado income taxes based on cost of certificate purchased by persons in the business of the transportation of ashes, trash, or other discarded materials. (Repealed)

Source: L. 80: Entire section added, p. 746, § 8, effective June 29. L. 85: Entire section repealed, p. 1368, § 42, effective June 28.

39-22-512. Commercial, industrial, and agricultural energy credit. (Repealed)

Source: L. 80: Entire section added, p. 726, § 21, effective May 1. L. 83: (1)(a) and (1)(b) amended, p. 1515, § 9, effective January 1, 1984. L. 87: (5)(a)(I) to (5)(a)(III) and (5)(b) amended and (6) repealed, pp. 1449, 1457, §§ 22, 31, effective June 22. L. 2004: Entire section repealed, p. 213, § 38, effective August 4.

39-22-513. Credit to lending institutions for making residential energy-related loans. (Repealed)

Source: L. 83: Entire section added, p. 1523, § 2, effective May 20. L. 87: (1), (3)(c)(I), (3)(e)(III), (4)(b), and (4)(c) amended, p. 1449, § 23, effective June 22. L. 88: (2) amended, p. 419, § 17, effective April 11. L. 2004: Entire section repealed, p. 214, § 39, effective August 4.

39-22-514. Tax credit for qualified costs incurred in preservation of historic properties. (1) (a) Except as otherwise provided in paragraph (b) of this subsection (1), for income tax years commencing on or after January 1, 1991, but prior to January 1, 2020, there shall be allowed a credit with respect to the income taxes imposed pursuant to the provisions of this article to each taxpayer:

(I) Who is the owner or qualified tenant of qualified property and who incurs qualified costs in an amount equaling or exceeding five thousand dollars in the qualified rehabilitation of such qualified property; or

(II) Who is allowed a credit for costs incurred in the rehabilitation of property located in Colorado pursuant to the provisions of section 38 of the internal revenue code.

(b) Any taxpayer who is allowed a credit for qualified expenditures incurred in the rehabilitation of property pursuant to the provisions of section 39-30-105.6 shall not be allowed the credit provided in paragraph (a) of this subsection (1).

(2) (a) The credit provided for in paragraph (a) of subsection (1) of this section shall not exceed an aggregate of fifty thousand dollars per qualified property or an amount equal to twenty percent of the aggregate qualified costs incurred per qualified property, whichever is less.

(b) (Deleted by amendment, L. 99, p. 1278, § 1, effective June 3, 1999.)

(3) (a) Except as otherwise provided in paragraph (b) of this subsection (3) and subsection (6) of this section, in order for any taxpayer to qualify for the credit provided for in paragraph (a) of subsection (1) of this section, the taxpayer shall:

(I) Except as otherwise provided in this subparagraph (I), submit a fee of two hundred fifty dollars, the plans and specifications for such proposed restoration, rehabilitation, or preservation, and a signed agreement, if any, specified in subsection (4) of this section to the appropriate reviewing entity and receive preliminary approval, in writing, from said reviewing entity stating that such proposed restoration, rehabilitation, or preservation constitutes qualified rehabilitation. In the discretion of the reviewing entity, the fee imposed pursuant to this subparagraph (I) may be reduced or eliminated when the amount of qualified costs expected to be incurred in connection with the restoration, rehabilitation, or preservation is less than fifteen thousand dollars. If any restoration, rehabilitation, or preservation has commenced prior to the submission of the application fee, plans and specifications, and signed agreement, if any, pursuant to the provisions of this subparagraph (I), the taxpayer shall also submit documentation satisfactory to the reviewing entity indicating the condition of the qualified property prior to commencement of the rehabilitation, including, but not limited to, photographs of the property and written declarations from persons knowledgeable about the property. For the purposes of this subparagraph (I), any owners of qualified property and any qualified tenants leasing said qualified property who wish to qualify for the credit provided for in paragraph (a) of subsection (1) of this section for said qualified property may jointly submit the fee and the plans and specifications, or such owners may submit the fee, the plans and specifications, and a list of qualified tenants leasing said qualified property and, if such owners or tenants have commenced restoration, rehabilitation, or preservation prior to the submission of the application fee, plans and specifications, and signed agreement, if any, pursuant to the provisions of this subparagraph (I), they shall also jointly submit such documentation as is required pursuant to this subparagraph (I).

(II) Except as otherwise provided in subsection (5) of this section, complete the qualified rehabilitation of the qualified property within a period of twenty-four months from the date upon which preliminary approval was given pursuant to the provisions of subparagraph (I) of this paragraph (a);

(III) Obtain a form from the reviewing entity verifying compliance with the provisions of this subsection (3). If more than one of the taxpayers have complied with the provisions of this subsection (3) for the same qualified property, the reviewing entity shall issue such verification form to each such taxpayer, and such verification form shall specify the proportion of the amount of the tax credit allowed to such taxpayer as determined pursuant to the provisions of subsection (4) of this section. The reviewing entity shall issue said verification form only upon the submittal of an accounting of total qualified costs incurred in said qualified rehabilitation and the names of the owners and qualified tenants who incurred such qualified costs, the payment of a fee in an amount determined pursuant to the provisions of paragraph (a) of subsection (11) of this section, and the making of the determination that such completed qualified rehabilitation:

(A) Conforms to the plans and specifications approved pursuant to subparagraph (I) of this paragraph (a);

(B) Was completed within the appropriate period of time; and

(C) Preserves and maintains those qualities of such qualified property which made it eligible for inclusion individually or as a contributing property in a district in the state

register of historic places or for designation as a landmark or as a contributing property in a historic district by a certified local government.

(IV) Submit the verification form obtained pursuant to the provisions of subparagraph (III) of this paragraph (a) with the income tax return being filed by the taxpayer for the income tax year in which such qualified rehabilitation is completed.

(b) The provisions of paragraph (a) of this subsection (3) shall not apply to any taxpayer who is allowed a credit for costs incurred in the rehabilitation of property located in Colorado pursuant to the provisions of section 38 of the internal revenue code.

(4) When more than one taxpayer qualify for the tax credit provided for in paragraph (a) of subsection (1) of this section for the same qualified property, the amount of the tax credit allowed pursuant to the provisions of this section shall be divided pro rata according to the number of such taxpayers unless a binding agreement has been filed with the reviewing entity, as specified in subparagraph (I) of paragraph (a) of subsection (3) of this section, that is signed by all of the taxpayers who qualify for said tax credit for the same qualified property and that specifies the manner in which the amount of the tax credit allowed is to be divided among such taxpayers. Nothing in this subsection (4) shall preclude the state income tax credit created pursuant to this section from being allocated among taxpayers in a different manner than the allocation of any credit claimed pursuant to section 38 of the internal revenue code.

(5) The reviewing entity may grant, upon request, a one-time extension of the completion deadline specified in subparagraph (II) of paragraph (a) of subsection (3) of this section. Such extension shall be for a period not to exceed twenty-four months and shall be granted only upon a showing of good cause.

(6) (a) (I) Any taxpayer who was given preliminary approval prior to January 1, 2020, pursuant to the provisions of subparagraph (I) of paragraph (a) of subsection (3) of this section; whose completion deadline as set forth in subparagraph (II) of paragraph (a) of subsection (3) and in subsection (5) of this section is subsequent to December 31, 2019; and who has not completed the qualified rehabilitation prior to January 1, 2020, shall, in order to qualify for the credit provided for in paragraph (a) of subsection (1) of this section, obtain a form from the reviewing entity verifying compliance with the provisions of subparagraph (I) of paragraph (a) of subsection (3) of this section and this subsection (6). If more than one of the taxpayers have complied with said provisions for the same qualified property, the reviewing entity shall issue such verification form to each such taxpayer, and such verification form shall specify the proportion of the amount of the tax credit allowed to such taxpayer as determined pursuant to subsection (4) of this section.

(II) The reviewing entity shall issue said verification form only upon the submittal of an accounting of total qualified costs incurred in said qualified rehabilitation prior to January 1, 2020, and the names of the owners and qualified tenants who incurred such qualified costs, the payment of a fee in an amount determined pursuant to the provisions of paragraph (a) of subsection (11) of this section, and the making of the determination that the portion of such qualified rehabilitation that was completed as of January 1, 2020:

(A) Conforms to the plans and specifications approved pursuant to subparagraph (I) of paragraph (a) of subsection (3) of this section; and

(B) Preserves and maintains those qualities of such qualified property which made it eligible for inclusion individually or as a contributing property in a district in the state register of historic places or for designation as a landmark or as a contributing property in a historic district by a certified local government.

(III) The taxpayer shall submit the verification form obtained pursuant to this paragraph (a) with the income tax return being filed by the taxpayer for the income tax year commencing on or after January 1, 2019, but prior to January 1, 2020.

(b) (Deleted by amendment, L. 99, p. 1278, § 1, effective June 3, 1999.)

(7) (a) Except as otherwise provided in paragraph (b) of this subsection (7), if the amount of the credit allowed pursuant to the provisions of this section exceeds the amount of income taxes otherwise due on the income of the taxpayer in the income tax year for which the credit is being claimed, the amount of the credit not used as an offset against income taxes in said income tax year may be carried forward as a credit against subsequent years' income tax liability for a period not exceeding ten years and shall be applied first to

the earliest income tax years possible. Any amount of the credit that is not used after said period shall not be refundable to the taxpayer.

(b) Any taxpayer who has refunded an amount pursuant to the provisions of subsection (8) of this section shall no longer be eligible to carry forward any amount of the credit which had not been used as of the date such refund is made.

(8) Notwithstanding any other law to the contrary, if any taxpayer who is the owner of qualified property and who has claimed the credit pursuant to the provisions of this section sells such qualified property within five years of the completion of the qualified rehabilitation or if any taxpayer who is a qualified tenant leasing qualified property and who has claimed the credit pursuant to the provisions of this section terminates the lease of such qualified property within five years of the completion of the qualified rehabilitation, the taxpayer shall refund the amount of the credit which has been used to offset income taxes which exceeds the following amounts:

(a) Within the first year, an amount equal to zero percent of the amount of the credit allowed;

(b) Within the second year, an amount equal to twenty percent of the amount of the credit allowed;

(c) Within the third year, an amount equal to forty percent of the amount of the credit allowed;

(d) Within the fourth year, an amount equal to sixty percent of the amount of the credit allowed;

(e) Within the fifth year, an amount equal to eighty percent of the amount of the credit allowed.

(9) Within eight months after April 20, 1990, the state historical society shall create appropriate forms and shall establish and promulgate criteria and procedures by which the restoration, rehabilitation, and preservation of qualified properties shall be determined to be qualified rehabilitation for the purposes of the credit provided for in paragraph (a) of subsection (1) of this section.

(10) (a) Each certified local government shall adopt a resolution stating whether such certified local government will act as a reviewing entity for the purposes of subsections (3) and (6) of this section. A copy of such resolution shall be sent to the state historic preservation officer.

(b) Any certified local government which has decided to act as a reviewing entity for any given year for the purposes of subsections (3) and (6) of this section shall be required to perform all duties and responsibilities pursuant to said subsections (3) and (6) for all qualified rehabilitations which received preliminary approval from said reviewing entity during such year.

(11) (a) The amount of the fee required to be paid pursuant to the provisions of subparagraph (III) of paragraph (a) of subsection (3) and subparagraph (II) of paragraph (a) of subsection (6) of this section shall be an amount equal to the appropriate amount determined pursuant to the following schedule minus the amount of the fee paid pursuant to subparagraph (I) of paragraph (a) of subsection (3) of this section; except that, in the discretion of the reviewing entity, the fee imposed pursuant to this paragraph (a) may be reduced or eliminated where the amount of the qualified costs incurred is less than fifteen thousand dollars:

Amount of qualified costs incurred	Amount of fee
\$5,000 up to and including \$15,000	\$ 250
Over \$15,000 up to and including \$50,000	\$ 500
Over \$50,000 up to and including \$100,000	\$ 750
Over \$100,000	\$ 1,000

(b) (I) Any certified local government which has decided to act as a reviewing entity for the purposes of subsections (3) and (6) of this section shall create a preservation fund. All fees collected pursuant to the provisions of subparagraphs (I) and (III) of paragraph (a) of subsection (3) and subparagraph (II) of paragraph (a) of subsection (6) of this section by

a certified local government shall be credited to the preservation fund of such certified local government. The moneys in such fund shall be used for expenditures of such certified government incurred in the performance of its duties pursuant to the provisions of this section.

(II) All fees collected pursuant to the provisions of subparagraphs (I) and (III) of paragraph (a) of subsection (3) and subparagraph (II) of paragraph (a) of subsection (6) of this section by the state historic preservation officer shall be transmitted to the state treasurer, who shall credit said fees to the state historic preservation fund, which fund is hereby created. The moneys in the state historic preservation fund shall be subject to annual appropriation by the general assembly to the state historical society for expenditures of the state historic preservation officer and the state historical society incurred in the performance of their duties pursuant to the provisions of this section and for expenditures incurred in the administration and general operations of the state historical society.

(11.5) Notwithstanding the amount specified for any fee in this section, the executive director by rule or as otherwise provided by law may reduce the amount of one or more of the fees if necessary pursuant to section 24-75-402 (3), C.R.S., to reduce the uncommitted reserves of the fund to which all or any portion of one or more of the fees is credited. After the uncommitted reserves of the fund are sufficiently reduced, the executive director by rule or as otherwise provided by law may increase the amount of one or more of the fees as provided in section 24-75-402 (4), C.R.S.

(11.7) (a) If the revenue estimate prepared by the staff of the legislative council in December 2010 and each December thereafter indicates that the amount of the total general fund revenues for that particular fiscal year will not be sufficient to grow the total state general fund appropriations by six percent over such appropriations for the previous fiscal year, then the credit authorized in this section shall not be allowed for any income tax year commencing during the calendar year following the year in which the estimate is prepared; except that any taxpayer who would have been eligible to claim a credit pursuant to this section in the income tax year in which the credit is not allowed shall be allowed to claim the credit earned in such income tax year in the next income tax year in which the estimate indicates that the amount of the total general fund revenues will be sufficient to grow the total state general fund appropriations by six percent over such appropriations for the previous fiscal year.

(b) The department of revenue shall, through its web site, specify on or before January 1, 2011, and on or before each January 1 thereafter, whether the credit authorized in this section shall be allowed for a given income tax year pursuant to paragraph (a) of this subsection (11.7).

(12) As used in this section, unless the context otherwise requires:

(a) "Certified local government" means any local government certified by the state historic preservation officer pursuant to the provisions of 16 U.S.C. sec. 470a (c) (1), as amended.

(b) "Contributing property" means property which by location, design, setting, materials, workmanship, feeling, and association adds to the sense of time, place, and historical development of a historic district.

(c) "Designated" means established by local preservation ordinance.

(d) "Property" means a building or structure or a unit of a multiunit building where such units are individually owned.

(e) "Qualified costs" means costs associated with the qualified rehabilitation of a qualified property. "Qualified costs" includes, but is not limited to, costs associated with demolition, carpentry, sheetrock, plaster, painting, ceilings, fixtures, doors and windows, fire sprinkler systems, roofing and flashing, exterior repair, cleaning, tuckpointing, and cleanup. "Qualified costs" does not include costs, commonly referred to as soft costs, which include, but are not limited to, costs associated with appraisals; architectural, engineering, and interior design fees; legal, accounting, and realtor fees; loan fees; sales and marketing; closing; building permit, use, and inspection fees; bids; insurance; project signs and phones; temporary power; bid bonds; copying; and rent loss during construction. "Qualified costs" also does not include, but shall not be limited, costs associated with acquisition; interior furnishings; new additions except as may be required to comply with building and safety

codes; excavation; grading; paving; landscaping; routine or periodic maintenance; repairs to outbuildings which are associated with a qualified property and which are less than fifty years old; and repairs to additions made to a qualified property after such property was included individually or as a contributing property in a district in the state register of historic places or was designated as a landmark or as a contributing property in a historic district by a certified local government.

(f) “Qualified property” means property located in Colorado which is:

(I) At least fifty years old; and

(II) (A) Listed individually or as a contributing property in a district on the state register of historic properties pursuant to the provisions of article 80.1 of title 24, C.R.S.;

(B) Designated as a landmark by a certified local government; or

(C) Listed as a contributing property within a designated historic district of a certified local government.

(g) “Qualified rehabilitation” means any exterior improvements, structural improvements, mechanical improvements, plumbing improvements, or electrical improvements undertaken to restore, rehabilitate, or preserve the historic character of a qualified property which meets the standards of rehabilitation of the United States secretary of the interior as adopted by the state historic preservation officer and certified local governments pursuant to federal law; but shall not include any improvements undertaken due to normal wear and tear which occurred to a qualified property. As used in this paragraph (g), “exterior improvements” includes, but is not limited to, improvements made to the exterior of the qualified property and to the exterior of any historic outbuildings which are associated with the qualified property and which are fifty or more years old. “Exterior improvements” does not include enlargements, additions, landscaping, routine or periodic maintenance, paving, and site work.

(h) “Qualified tenant” means a taxpayer who holds a lease of five years or longer on qualified property or a portion of such qualified property.

(i) “Reviewing entity” means:

(I) A certified local government which has decided pursuant to the provisions of paragraph (a) of subsection (10) of this section to perform the duties specified in subparagraph (I) of paragraph (a) of subsection (3) of this section; or

(II) The state historic preservation officer when such qualified property either is not located within the jurisdiction of any certified local government or is located within the jurisdiction of any certified local government who has decided pursuant to the provisions of paragraph (a) of subsection (10) of this section not to perform the duties specified in subparagraph (I) of paragraph (a) of subsection (3) of this section.

(j) “State historic preservation officer” means the person designated and appointed pursuant to the provisions of 16 U.S.C. sec. 470a (b) (1) (A), as amended.

(k) “Taxpayer” means:

(I) A resident individual; or

(II) A domestic or foreign corporation subject to the provisions of part 3 of this article.

Source: L. 90: Entire section added, p. 1730, § 1, effective April 20. L. 94: (1)(a) and (6)(a) amended, p. 1369, § 1, effective May 25. L. 98: (11.5) added, p. 1347, § 82, effective June 1. L. 99: IP(1)(a), (2), IP(3)(a), (3)(a)(I), (4), (6), (7)(a), (10)(a), and (11)(a) amended, p. 1278, § 1, effective June 3. L. 2008: IP(1)(a), (6)(a)(I), IP(6)(a)(II), (6)(a)(III), and (10)(a) amended and (11.7) added, p. 2266, § 1, effective August 5. L. 2009: (11.7)(a) amended, (SB 09-228), ch. 410, p. 2265, § 19, effective July 1; (6)(a)(I) amended, (SB 09-292), ch. 369, p. 1980, § 114, effective August 5.

Cross references: For additional funding by the general assembly to the state historical society, see § 24-80-202.5.

39-22-515. Tax credit for qualified equipment utilizing postconsumer waste. (Repealed)

Source: **L. 91:** Entire section added, p. 1990, § 1, effective June 1. **L. 92:** (6)(f) amended, p. 1262, § 30, effective August 1. **L. 2002:** (5) repealed, p. 862, § 5, effective August 7. **L. 2004:** Entire section repealed, p. 215, § 40, effective August 4.

39-22-516. Tax credit for purchase of vehicles using alternative fuels - repeal.

(1) and (2) Repealed.

(2.5) (a) As used in this subsection (2.5), unless the context otherwise requires:

(I) "Alternative fuel" means an alternative fuel as defined in section 25-7-106.8 (1) (a), C.R.S.

(II) (Deleted by amendment, L. 2002, p. 1066, § 3, effective August 7, 2002.)

(II.5) "Hybrid vehicle" means a motor vehicle with a hybrid propulsion system that uses an alternative fuel by operating on both an alternative fuel, including electricity, and a traditional fuel.

(III) "Motor vehicle" means any self-propelled vehicle required to be licensed or subject to licensing for operation upon the highways of this state, including a vehicle that uses a hybrid propulsion system.

(IV) "Near zero-emitting vehicle" means a motor vehicle exhibiting emissions characteristics that are near those of a zero-emitting vehicle. To qualify as a near zero-emitting vehicle, a motor vehicle must meet at least one of the following minimum requirements:

(A) The vehicle must be certified by the federal environmental protection agency as meeting an emission standard between the ultra-low-emitting vehicle emission standard and the zero-emitting vehicle emission standard; or

(B) The vehicle must be certified by the federal environmental protection agency as meeting the federal ultra-low-emitting vehicle emission standard and must be certified by any state as provided in the "Federal Clean Air Act" to an emission standard between the ultra-low-emitting vehicle emission standard and the zero-emitting vehicle emission standard.

(V) "Power source" means the engine or motor and associated wiring, fuel lines, engine coolant system, fuel storage containers, and miscellaneous components.

(VI) "Traditional fuel" means a petroleum-based motor fuel commonly used on the highways of this state in the year 1994.

(VII) "Uses an alternative fuel" or "to use an alternative fuel" means to operate solely on an alternative fuel, to operate on both an alternative fuel and a traditional fuel, or to operate alternately on a traditional fuel and an alternative fuel.

(b) (I) (Deleted by amendment, L. 2009, (HB 09-1331), ch. 416, p. 2293, § 2, effective June 4, 2009.)

(II) With respect to tax years commencing on or after July 1, 2000, but prior to January 1, 2010, there shall be allowed to any person a credit against the tax imposed by this article for each motor vehicle owned by such person that:

(A) Is titled and registered in the state of Colorado; and

(B) Uses or is converted to use an alternative fuel, is a hybrid vehicle, or has its power source replaced with a power source that uses an alternative fuel.

(c) The amount of the credit allowed pursuant to this subsection (2.5) shall be an amount equal to the percentage, as set forth in paragraph (d) of this subsection (2.5), of the following:

(I) The difference between the actual cost incurred by such person during the tax year in purchasing a motor vehicle that uses an alternative fuel and the cost of the same motor vehicle that uses a traditional fuel or, if the same vehicle is not available, then the cost of the most similar vehicle, taking into account the model, make, engine size, and options, that uses a traditional fuel;

(II) The difference between the actual cost incurred by such person during the tax year in replacing an existing power source in a motor vehicle that uses a traditional fuel with a power source that uses an alternative fuel and the cost of replacing the existing power

source in the motor vehicle with the same type of power source that uses a traditional fuel; or

(III) The actual cost incurred by such person during the tax year in converting the motor vehicle to a fuel system that uses an alternative fuel.

(d) (I) For the purposes of paragraph (c) of this subsection (2.5), except as otherwise provided in subparagraph (II) of this paragraph (d), the percentage of the difference in actual cost incurred or the percentage of the actual cost incurred that may be claimed as a credit pursuant to paragraph (b) of this subsection (2.5) shall be as follows:

Certification level:	Tax years commencing on or after July 1, 1998, but prior to January 1, 2007:	Tax years commencing on or after July 1, 2007, but prior to January 1, 2010:
Low-emitting vehicle	50%	50%
Ultra-low-emitting vehicle or inherently low-emitting vehicle	75%	75%
Zero-emitting vehicle	85%	85%

(II) For a motor vehicle purchase or power source replacement that permanently displaces a motor vehicle or power source that is ten years old or older, the percentage specified in subparagraph (I) that may be claimed pursuant to this paragraph (d) shall be multiplied by two, but in no event shall the percentage exceed one hundred percent. For the purposes of this subparagraph (II), “permanently displaces a motor vehicle or power source” means the vehicle or power source being replaced by the alternative fuel vehicle or power source will no longer be operated upon the highways of this state.

(e) The certification levels set forth in paragraph (d) of this subsection (2.5) shall have the same meaning as set forth in the regulations promulgated by the federal environmental protection agency in 40 CFR part 88 governing clean fuel vehicles.

(f) A near zero-emitting vehicle shall be treated as a zero-emitting vehicle for all purposes under this subsection (2.5).

(g) (Deleted by amendment, L. 2009, (HB 09-1331), ch. 416, p. 2293, § 2, effective June 4, 2009.)

(h) No more than one tax credit shall be granted pursuant to paragraph (d) of this subsection (2.5) for any individual motor vehicle.

(i) For income tax years commencing on and after January 1, 1999, but prior to January 1, 2010, a motor vehicle, conversion, or power source certified to the low-emitting vehicle emissions standard that is purchased by a person shall be eligible for a credit pursuant to this subsection (2.5).

(j) This subsection (2.5) is repealed, effective December 31, 2014.

(2.6) (a) As used in this subsection (2.6), unless the context otherwise requires:

(I) “Actual cost incurred” means the actual cost paid by the purchaser for the vehicle, conversion, or idling reduction technologies. The actual cost paid shall be calculated as the net of any credits, grants, or rebates, including federal credits, grants, or rebates for which the purchaser is eligible, but excluding the credit specified in this subsection (2.6).

(II) “Alternative fuel” means an alternative fuel as defined in section 25-7-106.8 (1) (a), C.R.S.

(III) “Category 1” means a motor vehicle that complies with bin 1 of the federal tier 2 emissions standards published by the federal environmental protection agency in the federal register at 65 FR 6698 (February 10, 2000), as amended.

(IV) "Category 2" means light duty passenger vehicle diesel-electric hybrids with a minimum fuel economy of seventy miles per gallon.

(V) "Category 3" means light duty passenger vehicle, light duty truck, and medium duty truck diesel-electric hybrid conversions that increase the fuel economy of the original motor vehicle by forty percent or more. "Category 3" also means new medium duty trucks that are diesel-electric hybrids or gasoline-electric hybrids that have thirty percent better fuel economy than a comparable vehicle powered solely by a diesel or gasoline internal combustion engine. For purposes of establishing a comparable vehicle, the diesel or gasoline internal combustion engine shall be standard in a vehicle of the same model year and the same vehicle class as established by the United States environmental protection agency and be comparable in weight, size, and use. Fuel economy comparisons shall be made using city fuel economy standards in a manner that is substantially similar to the manner in which city fuel economy is measured in accordance with procedures set forth in 40 CFR 600, as in effect on August 8, 2005.

(VI) "Category 4" means light duty passenger vehicle, light duty truck, and medium duty truck compressed natural gas conversions certified by the United States environmental protection agency and original equipment manufacturer compressed natural gas vehicles.

Editor's note: This version of subparagraph (VI) is effective until January 1, 2014.

(VI) "Category 4" means light duty passenger vehicle, light duty truck, and medium duty truck compressed natural gas or liquefied petroleum gas conversions certified by the United States environmental protection agency and original equipment manufacturer compressed natural gas vehicles.

Editor's note: This version of subparagraph (VI) is effective January 1, 2014.

(VII) "Category 5" means any idling reduction technologies.

(VIII) "Category 6" means a motor vehicle that complies with bin 2 or bin 3 of the federal tier 2 emissions standards published by the federal environmental protection agency in the federal register at 65 FR 6698 (February 10, 2000), as amended, with a minimum fuel economy of forty miles per gallon or miles per gallon gasoline equivalent or greater.

(IX) (A) "Category 7" means a motor vehicle that complies with bin 2 or bin 3 of the federal tier 2 emissions standards published by the federal environmental protection agency in the federal register at 65 FR 6698 (February 10, 2000), as amended, with a minimum fuel economy of thirty miles per gallon or miles per gallon gasoline equivalent or greater, but less than forty miles per gallon or miles per gallon gasoline equivalent.

(B) "Category 7" shall not mean original equipment manufacturer compressed natural gas vehicles certified by the United States environmental protection agency.

(X) "Gross vehicle weight rating" or "GVWR" shall have the same meaning as set forth in section 42-2-402 (6), C.R.S.

(XI) "Hybrid vehicle" means a motor vehicle with a hybrid propulsion system that operates on both electricity and an alternative fuel or traditional fuel.

(XII) "Idling reduction technologies" means idling reduction devices or advanced insulation, as those terms are defined in section 4053 of the internal revenue code, as amended, exempt from federal excise tax pursuant to said section 4053.

(XIII) "Light duty passenger vehicle" means a private passenger vehicle, including vans, capable of seating twelve passengers or less; except that the term does not include motor homes as defined in section 42-1-102 (57), C.R.S., or vehicles designed to travel on three or fewer wheels in contact with the ground.

(XIV) "Light duty truck" means a truck between zero and fourteen thousand pounds GVWR.

(XV) "Medium duty truck" means a truck with a gross vehicle weight rating greater than fourteen thousand pounds up to twenty-six thousand pounds.

(XVI) "Miles per gallon gasoline equivalent" means the standard unit of measure that measures how many miles an alternative vehicle can travel on the equivalent energy of one United States gallon of traditional fuel.

(XVII) "Motor vehicle" means any self-propelled vehicle, including a vehicle that uses a hybrid propulsion system, that is:

(A) Titled and registered in the state; and

(B) Required to be licensed or subject to licensing for operation upon the highways of the state.

(XVIII) "Plug-in hybrid electric vehicle" means:

(A) An original equipment manufacturer plug-in hybrid electric vehicle that can operate solely on electric power and that is capable of recharging its battery from an on-board generation source and an off-board electricity source; and

(B) A plug-in hybrid electric vehicle conversion that provides an increase in city fuel economy of seventy-five percent or more as compared to a comparable nonhybrid version vehicle for a minimum of twenty miles and that is capable of recharging its battery from an on-board generation source and an off-board electricity source. A vehicle shall be comparable if it is the same model year and the same vehicle class as established by the United States environmental protection agency and is comparable in weight, size, and use. Fuel economy comparisons shall be made using city fuel economy standards in a manner that is substantially similar to the manner in which city fuel economy is measured in accordance with procedures set forth in 40 CFR 600, as in effect on August 8, 2005.

(XIX) "Power source" means the engine or motor and associated wiring, fuel lines, engine coolant system, fuel storage containers, and miscellaneous components.

(XX) "Traditional fuel" means a petroleum-based motor fuel commonly used on the highways of this state in the year 2008.

(XXI) "Uses an alternative fuel" or "to use an alternative fuel" means to operate solely on an alternative fuel, to operate on both an alternative fuel and a traditional fuel, or to operate alternately on a traditional fuel and an alternative fuel.

(b) (I) Except as provided in subparagraph (II) of this paragraph (b), with respect to the tax years commencing on January 1, 2010, and January 1, 2011, there shall be allowed to any person a credit against the tax imposed by this article, not to exceed six thousand dollars, for each motor vehicle owned by such person that:

(A) Uses or is converted to use an alternative fuel;

(B) Is a hybrid vehicle;

(C) Is a plug-in hybrid electric vehicle;

(D) Has its power source replaced with a power source that uses an alternative fuel;

(E) Is modified to include idling reduction technology; or

(F) Is converted to a plug-in hybrid electric vehicle.

(II) With respect to the tax years commencing on January 1, 2010, and January 1, 2011, there shall be allowed to any person a credit against the tax imposed by this article for each category 4 vehicle.

(III) There shall be allowed to any person a credit against the tax imposed by this article, not to exceed six thousand dollars, for each category 7 vehicle purchased by such person on or after January 1, 2010, but before January 1, 2011.

(c) The amount of the credit allowed pursuant to this subsection (2.6) shall be an amount equal to the percentage, as set forth in paragraph (d) of this subsection (2.6), of the following:

(I) The difference between the actual cost incurred by such person during the tax year in purchasing a motor vehicle that uses an alternative fuel and the cost of the same motor vehicle that uses a traditional fuel or, if the same vehicle is not available, then the cost of the most similar vehicle, taking into account the model, make, engine size, and options, that uses a traditional fuel;

(II) The difference between the actual cost incurred by such person during the tax year in replacing an existing power source in a motor vehicle that uses a traditional fuel with a power source that uses an alternative fuel and the cost of replacing the existing power source in the motor vehicle with the same type of power source that uses a traditional fuel;

(III) The actual cost incurred by such person during the tax year in converting the motor vehicle to a fuel system that uses an alternative fuel;

(IV) The actual cost incurred by such person in purchasing idling reduction technologies; or

(d) (I) Except as provided in subparagraph (II) of this paragraph (d), for the purposes of paragraph (c) of this subsection (2.6), the percentage of the difference in actual cost incurred or the percentage of the actual cost incurred that may be claimed as a credit pursuant to paragraph (b) of this subsection (2.6) shall be as follows:

Category: Income tax years commencing on or after January 1, 2010, but prior to January 1, 2012:

Category 1	85%
Category 2	65%
Category 3	75%
Category 4	75%
Category 5	25%
Category 6	75%

(II) For the purchase or conversion of a category 3 or category 4 medium duty truck that permanently displaces a motor vehicle or power source that is twelve years old or older, the percentages specified for category 3 and category 4 in subparagraph (I) of this paragraph (d) shall be multiplied by one and twenty-five one-hundredths, but in no event shall the percentage exceed one hundred percent. For purposes of this subparagraph (II), “permanently displaces a motor vehicle or power source” means the vehicle or power source being replaced will be rendered inoperable and donated to an established auto parts recycler, as defined in section 42-4-2201 (1), C.R.S., or a scrap metal recycler, that operates pursuant to all laws, rules, and regulations of the state and the United States environmental protection agency regarding recycling.

(III) For the purposes of paragraph (c) of this subsection (2.6), the percentage of the difference in actual cost incurred or the percentage of the actual cost incurred that may be claimed as a credit for the purchase of a category 7 motor vehicle pursuant to subparagraph (III) of paragraph (b) of this subsection (2.6) shall be fifty percent.

(e) Except as provided in sub-subparagraph (B) of subparagraph (V) of paragraph (c) of this subsection (2.6), no more than one tax credit shall be granted pursuant to paragraph (d) of this subsection (2.6) for any individual motor vehicle.

(f) If a credit authorized in this subsection (2.6) exceeds the income tax due on the income of the taxpayer for the taxable year, the excess credit may not be carried forward and shall be refunded to the taxpayer.

(g) This subsection (2.6) is repealed, effective December 31, 2016.

(2.7) (a) As used in this subsection (2.7), unless the context otherwise requires:

(I) "Alternative fuel" shall have the same meaning as set forth in Title III of the federal "Energy Policy Act of 1992", Public Law 102-486, as amended.

(II) “Renewable energy source” means an alternative fuel that comes from a source that is not depleted with use or that can be replenished indefinitely, including solar, wind, hydropower, biomass, geothermal, or other similar source. Alternative fuels from a renewable energy source shall include ethanol from biomass, natural gas from waste treatment plants or landfills, electricity from wind, solar, or hydro power, and other alternative fuels from similar sources in conformance with this subparagraph (II) as designated by the air quality control commission.

(b) With respect to tax years commencing on or after January 1, 1998, but prior to January 1, 2011, there shall be allowed to any person a credit against the tax imposed by this article in an amount equal to a percentage, as determined pursuant to paragraph (c) of

this subsection (2.7), of the actual cost incurred by the person during the tax year in constructing, reconstructing, or acquiring an alternative fuel refueling facility that is directly attributable to the storage, compression, charging, or dispensing of alternative fuels to motor vehicles.

(c) A person may claim the following percentage of costs described in paragraph (b) of this subsection (2.7) as a credit pursuant to this subsection (2.7):

(I) Fifty percent of the costs incurred on or after January 1, 1998, but prior to January 1, 2006;

(II) Thirty-five percent of the costs incurred on or after January 1, 2006, but prior to January 1, 2009;

(III) Twenty percent of the costs incurred on or after January 1, 2009, but prior to July 1, 2011.

(d) For an alternative fuel refueling facility that will be generally accessible for use by persons in addition to the person claiming the credit, the percentage that may be claimed in paragraph (c) shall be multiplied by one and one-fourth.

(e) For an alternative fuel refueling facility that dispenses an alternative fuel derived from a renewable energy source, the percentage credit that may be claimed pursuant to paragraph (c) of this subsection (2.7) shall be multiplied by one and one-fourth. For a person to receive a higher percentage calculated pursuant to this paragraph (e), such person shall provide certification that at least seventy percent of the alternative fuel dispensed each year by the refueling facility will be derived from a renewable energy source for ten years.

(f) A person may elect to claim an increased percentage credit pursuant to either paragraph (d) or (e) of this subsection (2.7); except that in no event may both be relied upon to increase the credit.

(g) The aggregate amount of credit claimed by a person for any one alternative fuel refueling facility pursuant to this subsection (2.7) shall not exceed four hundred thousand dollars during any period of five consecutive tax years.

(h) In no event shall any person claim a credit for all or any portion of the cost of constructing, reconstructing, or acquiring an alternative fuel refueling facility, or any equipment used in connection with such facility, for which the person or any other person has previously claimed a credit pursuant to this subsection (2.7).

(3) Except as provided in paragraph (f) of subsection (2.6) of this section, the credits allowed by this section for any income tax year shall not exceed the taxpayer's actual tax liability for such taxable year. If the amount of a credit allowed by this section exceeds the taxpayer's actual tax liability for any income tax year in which the credit is claimed, referred to in this subsection (3) as the "unused credit year", such excess shall be an investment tax credit carryover to each of the five income tax years following the unused credit year and shall be applied first to the earliest income tax years possible.

(4) This section is repealed, effective December 31, 2016.

(5) If any provision of this section or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this section that can be given effect without the invalid provision or application, and to this end the provisions of this section are declared to be severable.

Source: **L. 92:** Entire section added, p. 2244, § 1, effective June 5. **L. 98:** Entire section amended, p. 1297, § 2, effective June 1. **L. 99:** (2.5)(i) amended, p. 984, § 10, effective May 28. **L. 2000:** (2.5)(a)(III), (2.5)(b), (2.5)(d)(I), (2.5)(i), (2.7)(b), (2.7)(c), and (4) amended, p. 1445, § 1, effective August 2. **L. 2002:** (2.5)(a)(II), (2.5)(e), and (2.5)(i) amended, p. 1066, § 3, effective August 7. **L. 2003:** (2.5)(a)(II.5) added and (2.5)(b)(II)(B) and (2.5)(g) amended, p. 1234, §§ 1, 2, effective September 1. **L. 2005:** (2.5)(d)(I) amended, p. 681, § 1, effective August 8. **L. 2009:** (2.5)(b), (2.5)(d)(I), (2.5)(g), (2.5)(i), (3), and (4) amended and (2.5)(j) and (2.6) added, (HB 09-1331), ch. 416, pp. 2293, 2295, §§ 2, 3, effective June 4. **L. 2010:** (2.6)(b)(III) and (2.6)(d)(III) added and (2.6)(d)(I) amended, (HB 10-1196), ch. 12, p. 65, §§ 1, 2, effective February 24. **L. 2011:** (2.6)(a)(VI) amended, (HB 11-1081), ch. 262, p. 1142, § 1, effective January 1, 2014.

Editor's note: (1) Subsection (1)(b) provided for the repeal of subsection (1), effective July 1, 1994. (See L. 92, p. 2244.)

(2) Subsection (2)(b) provided for the repeal of subsection (2), effective July 1, 1998. (See L. 98, p. 1297.)

(3) Section 3 of chapter 262, Session Laws of Colorado 2011, provides that the act amending subsection (2.6)(a)(VI) applies to tax years commencing on or after January 1, 2014.

Cross references: In 2009, subsections (2.5)(b), (2.5)(d)(I), (2.5)(g), (2.5)(i), (3), and (4) were amended and (2.5)(j) and (2.6) were added by the "Motor Vehicle Innovation Act". For the short title, see section 1 of chapter 416, Session Laws of Colorado 2009.

39-22-516.5. Tax credit for innovative motor vehicles - repeal. (1) As used in this section, unless the context otherwise requires:

(a) "Actual cost incurred" means the actual cost paid by the purchaser or lessee for the vehicle, conversion, or idling reduction technologies. The actual cost paid shall be calculated as the net of any credits, grants, or rebates, including federal credits, grants, or rebates for which the purchaser or lessee is eligible, but excluding the credit specified in this section.

(b) "Alternative fuel" means an alternative fuel as defined in section 25-7-106.8 (1) (a), C.R.S.

(c) "Category 1" means a motor vehicle that complies with bin 1 of the federal tier 2 emissions standards published by the federal environmental protection agency in the federal register at 65 FR 6698 (February 10, 2000), as amended.

(d) "Category 2" means light duty passenger vehicle diesel-electric hybrids with a minimum fuel economy of seventy miles per gallon.

(e) "Category 3" means light duty passenger vehicle, light duty truck, and medium duty truck diesel-electric hybrid conversions that increase the fuel economy of the original motor vehicle by forty percent or more.

(f) "Category 4" means light duty passenger vehicle, light duty truck, and medium duty truck compressed natural gas conversions certified by the United States environmental protection agency and original equipment manufacturer compressed natural gas vehicles.

Editor's note: This version of paragraph (f) is effective until January 1, 2014.

(f) "Category 4" means light duty passenger vehicle, light duty truck, and medium duty truck compressed natural gas or liquefied petroleum gas conversions certified by the United States environmental protection agency and original equipment manufacturer compressed natural gas vehicles.

Editor's note: This version of paragraph (f) is effective January 1, 2014.

(g) "Category 5" means any idling reduction technologies.

(h) "Category 6" means a motor vehicle that complies with bin 2 or bin 3 of the federal tier 2 emissions standards published by the federal environmental protection agency in the federal register at 65 FR 6698 (February 10, 2000), as amended, with a minimum fuel economy of forty miles per gallon or miles per gallon gasoline equivalent or greater.

(i) "Gross vehicle weight rating" or "GVWR" shall have the same meaning as set forth in section 42-2-402 (6), C.R.S.

(j) "Hybrid vehicle" means a motor vehicle with a hybrid propulsion system that operates on both electricity and an alternative fuel or traditional fuel.

(k) "Idling reduction technologies" means idling reduction devices or advanced insulation, as those terms are defined in section 4053 of the internal revenue code, as amended, exempt from federal excise tax pursuant to said section 4053.

(l) "Light duty passenger vehicle" means a private passenger vehicle, including vans, capable of seating twelve passengers or less; except that the term does not include motor homes as defined in section 42-1-102 (57), C.R.S., or vehicles designed to travel on three or fewer wheels in contact with the ground.

(m) "Light duty truck" means a truck between zero and fourteen thousand pounds GVWR.

(n) “Medium duty truck” means a truck with a gross vehicle weight rating greater than fourteen thousand pounds up to twenty-six thousand pounds.

(o) “Miles per gallon gasoline equivalent” means the standard unit of measure that measures how many miles an alternative vehicle can travel on the equivalent energy of one United States gallon of traditional fuel.

(p) “Motor vehicle” means any self-propelled vehicle, including a vehicle that uses a hybrid propulsion system, that is:

(I) Titled and registered in the state; and

(II) Required to be licensed or subject to licensing for operation upon the highways of the state.

(q) “Plug-in hybrid electric vehicle” means:

(I) An original equipment manufacturer plug-in hybrid electric vehicle that can operate solely on electric power and that is capable of recharging its battery from an on-board generation source and an off-board electricity source; and

(II) A plug-in hybrid electric vehicle conversion that provides an increase in city fuel economy of seventy-five percent or more as compared to a comparable nonhybrid version vehicle for a minimum of twenty miles and that is capable of recharging its battery from an on-board generation source and an off-board electricity source. A vehicle shall be comparable if it is the same model year and the same vehicle class as established by the United States environmental protection agency and is comparable in weight, size, and use. Fuel economy comparisons shall be made using city fuel economy standards in a manner that is substantially similar to the manner in which city fuel economy is measured in accordance with procedures set forth in 40 CFR 600, as in effect on August 8, 2005.

(r) “Power source” means the engine or motor and associated wiring, fuel lines, engine coolant system, fuel storage containers, and miscellaneous components.

(s) “Traditional fuel” means a petroleum-based motor fuel commonly used on the highways of the state in the year 2008.

(t) “Uses an alternative fuel” or “to use an alternative fuel” means to operate solely on an alternative fuel, to operate on both an alternative fuel and a traditional fuel, or to operate alternately on a traditional fuel and an alternative fuel.

(2) (a) With respect to the tax years commencing on January 1, 2012, but prior to January 1, 2016, there shall be allowed to any person a credit against the tax imposed by this article, not to exceed six thousand dollars, for each motor vehicle purchased or leased by such person that:

(I) Uses or is converted to use an alternative fuel;

(II) Is a hybrid vehicle;

(III) Is a plug-in hybrid electric vehicle;

(IV) Has its power source replaced with a power source that uses an alternative fuel; or

(V) Is modified to include idling reduction technology.

(b) With respect to the tax years commencing on January 1, 2012, but prior to January 1, 2016, there shall be allowed to any person a credit against the tax imposed by this article, not to exceed seven thousand five hundred dollars, for each motor vehicle purchased or leased by such person that is converted to a plug-in hybrid electric vehicle.

(c) If a motor vehicle is leased, the lessee, not the lessor, is allowed to claim the credit allowed pursuant to this section.

(3) The amount of the credit allowed pursuant to this section shall be an amount equal to the percentage, as set forth in subsection (4) of this section, of the following:

(a) The difference between the actual cost incurred by such person during the tax year in purchasing or leasing a motor vehicle that uses an alternative fuel and the cost of the same motor vehicle that uses a traditional fuel or, if the same vehicle is not available, then the cost of the most similar vehicle, taking into account the model, make, engine size, and options, that uses a traditional fuel;

(b) The difference between the actual cost incurred by such person during the tax year in replacing an existing power source in a motor vehicle that uses a traditional fuel with a power source that uses an alternative fuel and the cost of replacing the existing power source in the motor vehicle with the same type of power source that uses a traditional fuel;

- (c) The actual cost incurred by such person during the tax year in converting the motor vehicle to a fuel system that uses an alternative fuel;
- (d) The actual cost incurred by such person in purchasing or leasing idling reduction technologies; or
- (e) (I) The actual cost incurred by such person during the tax year in converting a hybrid vehicle to a plug-in hybrid electric vehicle.
- (II) Persons who claimed a tax credit in previous years for the purchase or lease of model year 2004 and newer hybrid vehicles are eligible to claim an additional credit for the conversion of such a hybrid vehicle to a plug-in hybrid electric vehicle.
- (4) For the purposes of subsection (3) of this section, the percentage of the difference in actual cost incurred or the percentage of the actual cost incurred that may be claimed as a credit pursuant to subsection (2) of this section shall be as follows:

Category:	Income tax years com- mencing on or after January 1, 2012, but prior to January 1, 2013:	Income tax years com- mencing on or after January 1, 2013, but prior to January 1, 2014:	Income tax years com- mencing on or after January 1, 2014, but prior to January 1, 2015:	Income tax years com- mencing on or after January 1, 2015, but prior to January 1, 2016:
Category 1	75%	75%	75%	75%
Category 2	45%	25%	15%	15%
Category 3	55%	35%	25%	25%
Category 4	55%	35%	25%	25%
Category 5	25%	25%	25%	25%
Category 6	10%	10%	0%	0%

- (5) Except as provided in subparagraph (II) of paragraph (e) of subsection (3) of this section, no more than one tax credit shall be granted pursuant to this section for any individual motor vehicle.
- (6) If a credit authorized in this section exceeds the income tax due on the income of the taxpayer for the taxable year, the excess credit may not be carried forward and shall be refunded to the taxpayer.
- (7) This section is repealed, effective December 31, 2020.

Source: **L. 2009:** Entire section added, (HB 09-1331), ch. 416, p. 2299, § 4, effective June 4. **L. 2011:** (1)(f) amended, (HB 11-1081), ch. 262, p. 1142, § 2, effective January 1, 2014. **L. 2012:** (1)(a), IP(2)(a), (2)(b), (3)(a), (3)(d), and (3)(e)(II) amended and (2)(c) added, (HB 12-1299), ch. 98, p. 328, § 1, effective April 12.

Editor’s note: Section 3 of chapter 262, Session Laws of Colorado 2011, provides that the act amending subsection (1)(f) applies to tax years commencing on or after January 1, 2014.

Cross references: In 2009, this section was added by the “Motor Vehicle Innovation Act”. For the short title, see section 1 of chapter 416, Session Laws of Colorado 2009.

39-22-517. Tax credit for child care center investments. (1) With respect to taxable years commencing on or after January 1, 1992, there shall be allowed to any person operating a child care center, family child care home, or foster care home licensed pursuant to the provisions of section 26-6-104, C.R.S., a credit against the tax imposed by this article in the amount of twenty percent of the taxpayer’s annual investment in tangible personal property to be used in such child care center, family child care home, or foster care home. Such credit shall be in addition to any credit for which the taxpayer may be eligible pursuant to the provisions of section 39-22-507.5 or section 39-22-507.6.

(2) With respect to taxable years commencing on or after July 1, 1992, there shall be allowed to any sole proprietorship, partnership, limited liability corporation, subchapter S corporation, or regular corporation which provides child care facilities which are incidental to their business and are licensed pursuant to section 26-6-104, C.R.S., for the use of its employees a credit against the tax imposed by this article in the amount of ten percent of the taxpayer's annual investment in tangible personal property to be used in such child care facilities. Such credit shall be in addition to any credit for which the taxpayer may be eligible pursuant to the provisions of section 39-22-507.5 or section 39-22-507.6.

(3) The credit allowed by this section for any income tax year shall not exceed the taxpayer's actual tax liability for such taxable year. If the amount of the credit allowed by this section exceeds the taxpayer's actual tax liability for any income tax year in which the child care center investment credit is claimed, referred to in this subsection (3) as the "unused credit year", such excess shall be an investment tax credit carryover to each of the three income tax years following the unused credit year and shall be applied first to the earliest income tax years possible.

Source: L. 92: Entire section added, p. 2245, § 1, effective June 5. L. 96: (1) amended, p. 267, § 22, effective July 1.

39-22-518. Tax modification for net capital gains - repeal. (1) For income tax years commencing on or after July 1, 1995, a modification, in the form of a reduction of income taxable by the state of Colorado, shall be allowed to any qualified taxpayer for the amount of income attributable to qualifying gains receiving capital treatment earned by the qualified taxpayer during the taxable year and included in federal taxable income.

(2) For the purposes of this section:

(a) (I) "Qualified taxpayer" means any taxpayer with no overdue state tax liabilities and not in default on any contractual obligations owed to the state or to any local government within Colorado at the time the modification created under this section is claimed.

(II) For the purposes of this paragraph (a), "overdue state tax liabilities" includes uncollectible tax liabilities resulting from bankruptcy.

(b) (I) "Qualifying gains receiving capital treatment" means the amount of net capital gains, as defined in section 1222 (11) of the internal revenue code, included in any qualified taxpayer's federal income tax return and:

(A) Earned by the qualified taxpayer on real or tangible personal property located within Colorado that was acquired on or after May 9, 1994, and that has been owned by the qualified taxpayer for a holding period of at least five years prior to the date of the transaction from which the net capital gains arise if the transaction from which the net capital gains arise occurred during an income tax year that commenced before January 1, 2010; or

(B) Earned on the sale of stock or on the sale of an ownership interest in a Colorado company, limited liability company, or partnership where the stock or ownership interest was acquired on or after May 9, 1994, and has been owned by the qualified taxpayer for a holding period of at least five years prior to the date of the transaction from which the net capital gains arise if the transaction from which the net capital gains arise occurred during an income tax year that commenced before January 1, 2010; or

(B.5) Earned by the qualified taxpayer on either real or tangible personal property located within Colorado that was acquired on or after May 9, 1994, but before June 4, 2009, or on tangible personal property only located either within or outside Colorado that was acquired on or after June 4, 2009, and either of which has been owned by the qualified taxpayer for a holding period of at least five years prior to the date of the transaction from which the net capital gains arise if the transaction from which the net capital gains arise occurred during an income tax year that commenced on or after January 1, 2010; except that no more than one hundred thousand dollars of net capital gains described in this subparagraph (B.5) shall be qualifying gains receiving capital treatment for any single income tax year.

(C) to (F) Repealed.

(II) For purposes of this paragraph (b):

(A) "Colorado company, limited liability company, or partnership" means an entity with fifty percent or more of its property and payroll, as determined in accordance with article IV of the multistate tax compact, section 24-60-1301, C.R.S., assigned to locations within Colorado.

(B) "Holding period" means an uninterrupted period of time.

(3) Any reduction in Colorado taxable income caused by the modification allowed by this section shall not create any right to a cash refund for the year for which the modification is claimed, nor shall the reduction create any right to a financial or other tax benefit which may be carried forward by the qualified taxpayer.

(4) Any taxpayer claiming a modification pursuant to this section shall submit with the taxpayer's income tax return in which such modification is claimed an affidavit, signed under penalty of perjury, stating that the taxpayer meets the definition of a qualified taxpayer as stated in paragraph (a) of subsection (2) of this section.

(5) to (7) Repealed.

(8) Sub-subparagraphs (A) and (B) of subparagraph (I) of paragraph (b) of subsection (2) of this section and this subsection (8) are repealed, effective January 1, 2015.

Source: **L. 94:** Entire section added, p. 1104, § 1, effective May 9. **L. 99:** (2)(b)(I) and (2)(b)(II)(B) amended and (5), (6), and (7) added, p. 1284, § 1, effective August 4. **L. 2000:** (2)(b)(I), (5)(a), (5)(b)(I), (5)(b)(II), (5)(b)(V), (5)(b)(VI), (6), and (7) amended and (5)(c) and (5)(d) added, pp. 1456, 1459, §§ 1, 2, effective August 2. **L. 2001:** (7) amended, p. 1280, § 55, effective June 5; (5)(a), (5)(b)(I), (5)(b)(II), and (5)(b)(VI) amended, p. 394, § 5, effective August 8. **L. 2009:** (2)(b)(I)(A) and (2)(b)(I)(B) amended, (2)(b)(I)(B.5) and (8) added, and (2)(b)(I)(C), (2)(b)(I)(D), (2)(b)(I)(E), (2)(b)(I)(F), (5), (6), and (7) repealed, (HB 09-1366), ch. 432, pp. 2397, 2398, §§ 1, 2, 3, effective June 4.

Cross references: (1) For other provisions concerning adjustments to federal taxable income, see § 39-22-104.

(2) For the legislative declaration contained in the 2001 act amending subsections (5)(a), (5)(b)(I), (5)(b)(II), and (5)(b)(VI), see section 1 of chapter 133, Session Laws of Colorado 2001.

39-22-519. Tax credit for book value of certificate for carriers of sludge - repeal. (Repealed)

Source: **L. 94:** Entire section added, p. 2822, § 2, effective June 3.

Editor's note: Subsection (3) provided for the repeal of this section, effective January 1, 1999. (See L. 94, p. 2822.)

39-22-520. Credit against tax - investment in school-to-career program. (1) The general assembly hereby recognizes that businesses and other aspects of the economy need trained, educated, and motivated workers. It is therefore the intent of the general assembly to encourage private investment in programs that integrate traditional education with on-the-job training. It is further the intent of the general assembly to foster and encourage cooperation among the private sector and the educational community in creating programs that will open doors of opportunity for students and enable them to develop the knowledge and skills that will empower them to become productive members of society.

(2) (a) For income tax years beginning on or after January 1, 1997, there shall be allowed to any person as a credit against the tax imposed by this article an amount equal to ten percent of the total qualified investment made in a qualified school-to-career program.

(b) For purposes of this subsection (2):

(i) "Qualified investment" means moneys directly expended for wages, workers' compensation insurance, unemployment insurance, and training expenses to employ a student to work or to allow a student to participate in an internship through a qualified school-to-career program.

(II) “Qualified school-to-career program” means a program that integrates school curriculum with job training, that encourages placement of students in jobs or internships that will teach them new skills and improve their school performance, and that is approved by:

- (A) The board of education of the school district in which the program is operating;
- (B) The state board for community colleges and occupational education;
- (C) The private occupational school division created pursuant to section 12-59-104.1, C.R.S.; or
- (D) The Colorado commission on higher education.

(3) If the amount of the credit provided for pursuant to subsection (2) of this section exceeds the amount of income taxes due on the income of the taxpayer in the income tax year for which the credit is being claimed, the amount of the credit not used as an offset against income taxes in said income tax year shall not be allowed as a refund but may be carried forward as a credit against subsequent years’ tax liability for a period not exceeding five years and shall be applied first to the earliest income tax years possible. Any amount of the credit that is not used during said period shall not be refundable to the taxpayer.

Source: L. 97: Entire section added, p. 1395, § 1, effective June 3. **L. 2008:** (2)(b)(II)(C) amended, p. 1482, § 27, effective May 28.

39-22-521. Credits against tax - employer expenses - public assistance recipients.

(1) With respect to taxable years commencing on or after January 1, 1998, there shall be allowed to an employer of any person receiving public assistance pursuant to the Colorado works program set forth in part 7 of article 2 of title 26, C.R.S., a credit, for not more than two years, against the tax imposed by this article in the amount of twenty percent of the employer’s annual investment in any one or more of the following services that are incidental to the employer’s business:

(a) The provision of child care services or the payment of the costs associated with child care services for children of employees receiving public assistance;

(b) The provision of health or dental insurance for employees receiving public assistance, which health or dental insurance coverage, if less than the coverage provided through medicaid, shall be supplemented by medicaid to provide full medicaid benefits to the employee;

(c) The provision of job training or basic education of employees receiving public assistance;

(d) The provision of programs for the transportation of public assistance employees to and from work.

(2) The tax credit described in subsection (1) of this section shall be in addition to any other credits for which the employer may be eligible pursuant to the provisions of article 30 of this title.

(3) The credit allowed by this section for any income tax year shall not exceed the employer’s actual tax liability for such taxable year. If the amount of the credit allowed by this section exceeds the employer’s actual tax liability for any income tax year in which the credit authorized in this section is claimed, such excess shall be a tax credit carryover to each of the three income tax years following the unused credit year and shall be applied first to the earliest income tax years possible.

Source: L. 97: Entire section added, p. 1245, § 52, effective July 1.

39-22-522. Credit against tax - conservation easements. (1) For purposes of this section, “taxpayer” means a resident individual or a domestic or foreign corporation subject to the provisions of part 3 of this article, a partnership, S corporation, or other similar pass-through entity, estate, or trust that donates a conservation easement as an entity, and a partner, member, and subchapter S shareholder of such pass-through entity.

(2) For income tax years commencing on or after January 1, 2000, and, with regard to any credit over the amount of one hundred thousand dollars, for income tax years

commencing on or after January 1, 2003, subject to the provisions of subsections (4) and (6) of this section, there shall be allowed a credit with respect to the income taxes imposed by this article to each taxpayer who donates during the taxable year all or part of the value of a perpetual conservation easement in gross created pursuant to article 30.5 of title 38, C.R.S., upon real property the taxpayer owns to a governmental entity or a charitable organization described in section 38-30.5-104 (2), C.R.S. The credit shall only be allowed for a donation that is eligible to qualify as a qualified conservation contribution pursuant to section 170 (h) of the internal revenue code, as amended, and any federal regulations promulgated in connection with such section. The amount of the credit shall not include the value of any portion of an easement on real property located in another state.

(2.5) Notwithstanding any other provision of this section, for income tax years commencing during the 2011, 2012, and 2013 calendar years, a taxpayer conveying a conservation easement in 2011, 2012, or 2013 and claiming a credit pursuant to this section shall, in addition to any other requirements of this section, submit a claim for the credit to the division of real estate in the department of regulatory agencies. The division shall issue a certificate for the claims received in the order submitted. After certificates have been issued for credits that exceed an aggregate of twenty-two million dollars for all taxpayers for income tax years commencing in each of the 2011 and 2012 calendar years and thirty-four million dollars for each income tax year commencing in the 2013 calendar year, any claims that exceed the amount allowed for a specified calendar year shall be placed on a wait list in the order submitted and a certificate shall be issued for use of the credit in 2012 or 2013. The division shall not issue credit certificates that exceed twenty-two million dollars for each income tax year commencing in the 2011 and 2012 calendar years and thirty-four million dollars for each income tax year commencing in the 2013 calendar year. No claim for a credit shall be allowed for any income tax year commencing during the 2011, 2012, or 2013 calendar years unless a certificate has been issued by the division. The right to claim the credit shall be vested in the taxpayer at the time a credit certificate is issued. The division may promulgate rules in accordance with article 4 of title 24, C.R.S., for the issuance of certificates in accordance with this subsection (2.5).

(3) In order for any taxpayer to qualify for the credit provided for in subsection (2) of this section, the taxpayer shall submit the following in a form approved by the executive director to the department of revenue at the same time as the taxpayer files a return for the taxable year in which the credit is claimed:

(a) A statement indicating whether a deduction was claimed on the taxpayer's federal income tax return for a conservation easement in gross;

(b) A statement that reflects the information included in the noncash charitable contributions form used to claim a deduction for a conservation easement in gross on a federal income tax return and whether the donation was made in order to get a permit or other approval from a local or other governing authority;

(c) A statement to be made available to the public by the department of revenue that includes a summary of the conservation purposes as defined in section 170 (h) of the internal revenue code that are protected by the easement; the county, township, and range where the easement is located; the number of acres subject to the easement; the amount of the tax credit claimed; and the name of the organization holding the easement;

(d) A summary of a qualified appraisal that meets the requirements set forth in subsection (3.3) of this section; however, if requested by the department of revenue, the taxpayer shall submit the appraisal itself;

(e) A copy of the appraisal and accompanying affidavit from the appraiser submitted to the division of real estate in the department of regulatory agencies in accordance with the provisions of section 12-61-719, C.R.S.;

(f) If the holder of the conservation easement is an organization to which the certification program in section 12-61-720, C.R.S., applies, a sworn affidavit from the holder of the conservation easement in gross that includes the following:

(I) An acknowledgment that the holder has filed the information with the department of revenue and the division of real estate in accordance with section 24-33-112, C.R.S.;

(II) An acknowledgment of whether the transaction is part of a series of transactions by the same donor; and

(III) An acknowledgment that the holder has reviewed the completed Colorado gross conservation easement credit schedule to be filed by the taxpayer and that the property is accurately described in the schedule.

(3.3) The appraisal for a conservation easement in gross for which a credit is claimed shall be a qualified appraisal from a qualified appraiser, as those terms are defined in section 170 (f) (11) of the internal revenue code. The appraisal shall be in conformance with the uniform standards for professional appraisal practice promulgated by the appraisal standards board of the appraisal foundation and any other provision of law. The appraiser shall hold a valid license as a certified general appraiser in accordance with the provisions of part 7 of article 61 of title 12, C.R.S. The appraiser shall also meet any education and experience requirements established by the board of real estate appraisers in accordance with section 12-61-719 (7), C.R.S. If there is a final determination, other than by settlement of the taxpayer, that an appraisal submitted in connection with a claim for a credit pursuant to this section is a substantial or gross valuation misstatement as such misstatements are defined in section 1219 of the federal "Pension Protection Act of 2006", Pub.L. 109-280, the department shall submit a complaint regarding the misstatement to the board of real estate appraisers for disciplinary action in accordance with the provisions of part 7 of article 61 of title 12, C.R.S.

(3.5) (a) The executive director shall have the authority, pursuant to subsection (8) of this section, to require additional information from the taxpayer or transferee regarding the appraisal value of the easement, the amount of the credit, and the validity of the credit. In resolving disputes regarding the validity or the amount of a credit allowed pursuant to subsection (2) of this section, including the value of the conservation easement for which the credit is granted, the executive director shall have the authority, for good cause shown and in consultation with the division of real estate and the conservation easement oversight commission created in section 12-61-721 (1), C.R.S., to review and accept or reject, in whole or in part, the appraisal value of the easement, the amount of the credit, and the validity of the credit based upon the internal revenue code and federal regulations in effect at the time of the donation. If the executive director reasonably believes that the appraisal represents a gross valuation misstatement, receives notice of such a valuation misstatement from the division of real estate, or receives notice from the division of real estate that an enforcement action has been taken by the board of real estate appraisers against the appraiser, the executive director shall have the authority to require the taxpayer to provide a second appraisal at the expense of the taxpayer. The second appraisal shall be conducted by a certified general appraiser in good standing and not affiliated with the first appraiser that meets qualifications established by the division of real estate. In the event the executive director rejects, in whole or in part, the appraisal value of the easement, the amount of the credit, or the validity of the credit, the procedures described in sections 39-21-103, 39-21-104, 39-21-104.5, and 39-21-105 shall apply.

(b) In consultation with the division of real estate and the conservation easement oversight commission created in section 12-61-721 (1), C.R.S., the executive director shall develop and implement a separate process for the review by the department of revenue of gross conservation easements. The review process shall be consistent with the statutory obligations of the division and the commission and shall address gross conservation easements for which the department of revenue has been informed that an audit is being performed by the internal revenue service. The executive director shall share information used in the review of gross conservation easements with the division. Notwithstanding part 2 of article 72 of title 24, C.R.S., in order to protect the confidential financial information of a taxpayer, the division and the commission shall deny the right to inspect any information provided by the executive director in accordance with this paragraph (b). On or before January 1, 2009, the executive director shall report to the general assembly on the status of the development and implementation of the process required by this paragraph (b).

(3.7) If the gain on the sale of a conservation easement in gross for which a credit is claimed pursuant to this section would not have been a long-term capital gain, as defined under the internal revenue code, if, at the time of the donation, the taxpayer had sold the conservation easement at its fair market value, then the value of the conservation easement in gross for the purpose of calculating the amount of the credit shall be reduced to the

taxpayer's tax basis in the conservation easement in gross. The tax basis of a taxpayer in a conservation easement shall be determined and allocated pursuant to sections 170 (e) and 170 (h) of the internal revenue code, as amended, and any federal regulations promulgated in connection with such sections. This subsection (3.7) shall be applied in a manner that is consistent with the tax treatment of qualified conservation contributions under the internal revenue code and the federal regulations promulgated under the internal revenue code.

(4) (a) (I) For a conservation easement in gross created in accordance with article 30.5 of title 38, C.R.S., that is donated prior to January 1, 2007, to a governmental entity or a charitable organization described in section 38-30.5-104 (2), C.R.S., the credit provided for in subsection (2) of this section shall be an amount equal to one hundred percent of the first one hundred thousand dollars of the fair market value of the donated portion of such conservation easement in gross when created, and forty percent of all amounts of the donation in excess of one hundred thousand dollars; except that in no case shall the credit exceed two hundred sixty thousand dollars per donation.

(II) For a conservation easement in gross created in accordance with article 30.5 of title 38, C.R.S., that is donated on or after January 1, 2007, to a governmental entity or a charitable organization described in section 38-30.5-104 (2), C.R.S., the credit provided for in subsection (2) of this section shall be an amount equal to fifty percent of the fair market value of the donated portion of such conservation easement in gross when created; except that in no case shall the credit exceed three hundred seventy-five thousand dollars per donation.

(III) In no event shall a credit claimed by a taxpayer filing a joint federal return, or the sum of the credits claimed by taxpayers filing married separate federal returns, exceed the dollar limitations of this paragraph (a).

(b) For income tax years commencing on or after January 1, 2000, in the case of a joint tenancy, tenancy in common, partnership, S corporation, or other similar entity or ownership group that donates a conservation easement as an entity or group, the amount of the credit allowed pursuant to subsection (2) of this section shall be allocated to the entity's owners, partners, members, or shareholders in proportion to the owners', partners', members', or shareholders' distributive shares of income or ownership percentage from such entity or group. For income tax years commencing on or after January 1, 2000, but prior to January 1, 2003, the total aggregate amount of the credit allocated to such owners, partners, members, and shareholders shall not exceed one hundred thousand dollars, and, if any refund is claimed pursuant to subparagraph (I) of paragraph (b) of subsection (5) of this section, the aggregate amount of the refund and the credit claimed by such partners, members, and shareholders shall not exceed twenty thousand dollars for that income tax year. For income tax years commencing on or after January 1, 2003, but prior to January 1, 2007, the total aggregate amount of the credit allocated to such owners, partners, members, and shareholders shall not exceed two hundred sixty thousand dollars, and, if any refund is claimed pursuant to subparagraph (I) of paragraph (b) of subsection (5) of this section, the aggregate amount of the refund and the credit claimed by such owners, partners, members, and shareholders shall not exceed fifty thousand dollars for that income tax year. For income tax years commencing on or after January 1, 2007, the total aggregate amount of the credit allocated to such owners, partners, members, and shareholders shall not exceed three hundred seventy-five thousand dollars, and, if any refund is claimed pursuant to subparagraph (I) of paragraph (b) of subsection (5) of this section, the aggregate amount of the refund and the credit claimed by such owners, partners, members, and shareholders shall not exceed fifty thousand dollars for that income tax year.

(5) (a) If the tax credit provided in this section exceeds the amount of income tax due on the income of the taxpayer for the taxable year, the amount of the credit not used as an offset against income taxes in said income tax year and not refunded pursuant to paragraph (b) of this subsection (5) may be carried forward and applied against the income tax due in each of the twenty succeeding income tax years but shall be first applied against the income tax due for the earliest of the income tax years possible. Any amount of the credit that is not used after said period shall not be refundable.

(b) (I) Subject to the requirements specified in subparagraphs (II) and (III) of this paragraph (b), for income tax years commencing on or after January 1, 2000, if the amount

of the tax credit allowed in or carried forward to any tax year pursuant to this section exceeds the amount of income tax due on the income of the taxpayer for the year, the taxpayer may elect to have the amount of the credit not used as an offset against income taxes in said income tax year refunded to the taxpayer.

(II) A taxpayer may elect to claim a refund pursuant to subparagraph (I) of this paragraph (b) only if, based on the financial report prepared by the controller in accordance with section 24-77-106.5, C.R.S., the controller certifies that the amount of state revenues for the state fiscal year ending in the income tax year for which the refund is claimed exceeds the limitation on state fiscal year spending imposed by section 20 (7) (a) of article X of the state constitution and the voters statewide either have not authorized the state to retain and spend all of the excess state revenues or have authorized the state to retain and spend only a portion of the excess state revenues for that fiscal year.

(III) If any refund is claimed pursuant to subparagraph (I) of this paragraph (b), then the aggregate amount of the refund and amount of the credit used as an offset against income taxes for that income tax year shall not exceed fifty thousand dollars for that income tax year. In the case of a partnership, S corporation, or other similar pass-through entity that donates a conservation easement as an entity, if any refund is claimed pursuant to subparagraph (I) of this paragraph (b), the aggregate amount of the refund and the credit claimed by the partners, members, or shareholders of the entity shall not exceed the dollar limitation set forth in this subparagraph (III) for that income tax year. Nothing in this subparagraph (III) shall limit a taxpayer's ability to claim a credit against taxes due in excess of fifty thousand dollars in accordance with subsection (4) of this section.

(6) A taxpayer may claim only one tax credit under this section per income tax year; except that a transferee of a tax credit under subsection (7) of this section may claim an unlimited number of credits. A taxpayer who has carried forward or elected to receive a refund of part of the tax credit in accordance with subsection (5) of this section shall not claim an additional tax credit under this section for any income tax year in which the taxpayer applies the amount carried forward against income tax due or receives a refund. A taxpayer who has transferred a credit to a transferee pursuant to subsection (7) of this section shall not claim an additional tax credit under this section for any income tax year in which the transferee uses such transferred credit.

(7) For income tax years commencing on or after January 1, 2000, a taxpayer may transfer all or a portion of a tax credit granted pursuant to subsection (2) of this section to another taxpayer for such other taxpayer, as transferee, to apply as a credit against the taxes imposed by this article subject to the following limitations:

(a) The taxpayer may only transfer such portion of the tax credit as the taxpayer has neither applied against the income taxes imposed by this article nor used to obtain a refund;

(b) The taxpayer may transfer a pro-rated portion of the tax credit to more than one transferee;

(c) A transferee may not elect to have any transferred credit refunded pursuant to paragraph (b) of subsection (5) of this section;

(d) For any tax year in which a tax credit is transferred pursuant to this subsection (7), both the taxpayer and the transferee shall file written statements with their income tax returns specifying the amount of the tax credit that has been transferred. A transferee may not claim a credit transferred pursuant to this subsection (7) unless the taxpayer's written statement verifies the amount of the tax credit claimed by the transferee.

(e) To the extent that a transferee paid value for the transfer of a conservation easement tax credit to such transferee, the transferee shall be deemed to have used the credit to pay, in whole or in part, the income tax obligation imposed on the transferee under this article, and to such extent the transferee's use of a tax credit from a transferor under this section to pay taxes owed shall not be deemed a reduction in the amount of income taxes imposed by this article on the transferee;

(f) The transferee shall submit to the department a form approved by the department. The transferee shall also file a copy of the form with the entity to whom the taxpayer donated the conservation easement.

(g) A transferee of a tax credit shall purchase the credit prior to the due date imposed by this article, not including any extensions, for filing the transferee's income tax return;

(h) A tax credit held by an individual either directly or as a result of a donation by a pass-through entity, but not a tax credit held by a transferee unless used by the transferee's estate for taxes owed by the estate, shall survive the death of the individual and may be claimed or transferred by the decedent's estate. This paragraph (h) shall apply to any tax credit from a donation of a conservation easement made on or after January 1, 2000.

(i) The donor of an easement for which a tax credit is claimed or the transferor of a tax credit transferred pursuant to this subsection (7) shall be the tax matters representative in all matters with respect to the credit. The tax matters representative shall be responsible for representing and binding the transferees with respect to all issues affecting the credit, including, but not limited to, the charitable contribution deduction, the appraisal, notifications and correspondence from and with the department of revenue, audit examinations, assessments or refunds, settlement agreements, and the statute of limitations. The transferee shall be subject to the same statute of limitations with respect to the credit as the transferor of the credit.

(j) Final resolution of disputes regarding the tax credit between the department of revenue and the tax matters representative, including final determinations, compromises, payment of additional taxes or refunds due, and administrative and judicial decisions, shall be binding on transferees.

(8) The executive director of the department of revenue may promulgate rules for the implementation of this section. Such rules shall be promulgated in accordance with article 4 of title 24, C.R.S.

(9) Any taxpayer who claims a credit for the donation of a conservation easement contrary to the provisions of this section shall be liable for such deficiencies, interest, and penalties as may be specified in this article or otherwise provided by law.

(10) On or before July 1, 2008, the department of revenue shall create a report, which shall be made available to the public, on the credits claimed in the previous year in accordance with this section. For each credit claimed for a conservation easement in gross, the report shall summarize by county where the easement is located, the acres under easement, the appraised value of the easement, the donated value of the easement, and the name of any holders of the easement; except that the department shall combine such information for multiple counties where necessary to ensure that the information for no fewer than three easements is summarized for any county or combination of counties in the report. The report shall be updated annually to reflect the same information for any additional credits that have been granted since the previous report.

(11) On or before December 31, 2007, the department of revenue shall create a report, which shall be made available to the public, with as much of the information specified in paragraph (c) of subsection (3) of this section as is available to the department, summarized by county, for each tax credit claimed for a conservation easement in gross for tax years commencing on or after January 1, 2000.

Source: **L. 99:** Entire section added, p. 976, § 1, effective August 4. **L. 2000:** (4), (5), and (6) amended and (7) and (8) added, p. 894, § 1, effective August 2. **L. 2001:** (1), (2), (3), (4), and (5)(b)(III) amended, p. 395, § 6, effective August 8; (1), (2), (3), (4), (5)(b)(III), (6), (7)(a), (7)(b) amended and (7)(e) and (7)(f) added, p. 901, § 1, effective January 1, 2003. **L. 2002:** (2) amended and (9) added, p. 510, § 1, effective August 7; (2) amended and (9) added, p. 511, § 2, effective January 1, 2003. **L. 2005:** (3.5), (7)(g), (7)(h), (7)(i), and (7)(j) added, pp. 1479, 1480, §§ 1, 2, effective June 7. **L. 2006:** (4) amended, p. 822, § 1, effective August 7. **L. 2007:** (3), (3.5), and (7)(i) amended and (3.3), (10), and (11) added, p. 1228, § 3, effective August 3. **L. 2008:** (3)(b), (3)(e), IP(3)(f), (3)(f)(I), (3.3), and (3.5) amended and (3.7) added, p. 2316, § 8, effective July 1. **L. 2010:** (2.5) added, (HB 10-1197), ch. 175, p. 635, § 4, effective August 11. **L. 2011:** (2.5) amended, (HB 11-1300), ch. 193, p. 753, § 4, effective May 19.

Editor's note: Subsections (2), (4), and (5)(b)(III) were amended in House Bill 01-1364. Those amendments were superseded by the amendments to said subsections in House Bill 01-1090, effective January 1, 2003.

Cross references: (1) For the legislative declaration contained in the 2001 act amending subsections (1), (2), (3), (4), and (5)(b)(III), see section 1 of chapter 133, Session Laws of Colorado 2001.

(2) For the legislative declaration contained in the 2008 act amending subsections (3)(b), (3)(e), the introductory portion to subsection (3)(f), subsections (3)(f)(I), (3.3), and (3.5) and enacting subsection (3.7), see section 1 of chapter 448, Session Laws of Colorado 2008.

(3) For the legislative declaration stating the purpose of, and the provision directing legislative staff agencies to conduct, a post-enactment review pursuant to § 2-2-1201 scheduled in 2010, see sections 1 and 10 of chapter 448, Session Laws of Colorado 2008. To obtain a copy of the review, once completed, view Colorado Legislative Council's web site.

ANNOTATION

Law reviews. For article, "The Unique Benefits of Conservation Easements in Colorado", see 30 Colo. Law. 49 (December 2001). For article, "Changes to Colorado's Conservation Income Tax Credit Law", see 32 Colo. Law. 65 (February 2003).

The \$100,000 "per donation" cap on the amount of the tax credit that could be claimed under a prior version of this section

was an aggregate cap on the amount of the credit that could be claimed by all tenants in common for the donation of undivided property. The department of revenue therefore properly reduced to a total of \$100,000 total conservation easement tax credits of \$154,700 claimed in equal shares by two tenants in common. *Huber v. Kenna*, 205 P.3d 1158 (Colo. 2009) (decided under former law).

39-22-522.5. Conservation easement tax credits - dispute resolution - legislative declaration. (1) The general assembly hereby finds, determines, and declares that:

(a) Colorado's conservation easement program is an important preservation tool used to balance economic needs with natural resources such as land and water preservation. Colorado's conservation easement tax credit and the federal tax deduction have allowed many farmers and ranchers the opportunity to donate their development rights to preserve a legacy of open spaces in Colorado for wildlife, agriculture, and ranching.

(b) Citizens throughout Colorado believe good, sound conservation practices are important to Colorado's quality of life, agriculture, and wildlife heritage;

(c) Colorado's conservation easement tax credit program was designed to give land-owners an incentive to conserve and preserve their land in a predominantly natural, scenic, or open condition;

(d) While the department of revenue has allowed the great majority of claimed conservation easement tax credits, hundreds of claimed credits have been denied but have not yet been finally adjudicated through the existing administrative process;

(e) Due to the unique issues of confidentiality and multiple interested and related parties involved in the litigation of disputed conservation easement tax credits, the general assembly determines that it is appropriate to enact procedural changes that will provide for equitable and expedited litigation or resolution of these cases;

(f) It is the intent of the general assembly to enact procedural changes that further important matters of public policy concerning the equitable and efficient resolution of disputes regarding claimed conservation easement tax credits. It is the intent of the general assembly that any appeal brought pursuant to subsection (2) of this section shall be expedited to the extent practicable and administered in the manner deemed most efficient and fair by the executive director or the district court.

(g) The procedural changes set forth in this section shall apply to any dispute regarding a tax credit from a donation of a conservation easement made on or after January 1, 2000, for which a final determination has not been issued;

(h) It is the intent of the general assembly to provide taxpayers with incentives to waive an administrative hearing and proceed directly to a de novo appeal to the district court in accordance with the procedures set forth in this section. The incentives include waiver of the bond requirement and waiver of accrual of interest and penalties during the time the matter is on appeal to the district court.

(i) The general assembly strongly encourages the executive director of the department of revenue to agree to waive interest and penalties for tax matters representatives and credit

buyers who have acted in good faith to resolve disputed conservation easement tax credits; and

(j) This section is intended to effect changes to the law that are procedural or remedial in nature. The procedural changes set forth in this section shall not be construed to take away or impair any vested right acquired under existing law, or to create any new obligation, impose any new duty, or attach any new disability with respect to any past transaction or consideration. The provisions of this section are designed to address matters of public policy related to the fair and equitable resolution of conservation easement tax credit disputes in accordance with applicable laws and court rules.

(2) For any credit claimed pursuant to section 39-22-522, for which a notice of deficiency, notice of disallowance, or notice of rejection of refund claim has been mailed by the department of revenue as of May 1, 2011, but for which a final determination has not been issued before May 19, 2011, the tax matters representative may elect to waive the administrative process provided by section 39-21-103 and appeal the notice of deficiency, disallowance, or rejection of refund claim directly to a district court in accordance with the following provisions, which also apply to an appeal filed in accordance with subsection (6) of this section; except that paragraphs (a), (c), and (d) of this subsection (2) shall not apply to such an appeal:

(a) The tax matters representative shall make the election by mailing a written notice of appeal that includes the certified signature of the tax matters representative to the executive director and the district court for the county that has venue in the case as specified in paragraph (b) of this subsection (2) on or before October 1, 2011. The notice shall be sent by certified mail.

(b) Appeals brought pursuant to this section shall be filed in the district court for the county where the land encumbered by the easement is located. At the discretion of the chief justice, the state may be divided into three regions for purposes of consolidating appeals, with each region consisting of the following judicial districts:

Region	Judicial Districts
Region 1	1st, 2nd, 8th, 13th, 17th, 18th, 19th, and 20th
Region 2	3rd, 4th, 10th, 11th, 12th, 15th, and 16th
Region 3	5th, 6th, 7th, 9th, 14th, 21st, and 22nd

(c) If a tax matters representative elects to waive the administrative process and appeal directly to a district court pursuant to this subsection (2), no surety bond or other deposit shall be required in connection with the appeal. This paragraph (c) shall not apply to tax matters representatives who do not elect to waive the administrative process.

(d) If the tax matters representative elects to waive the administrative process and appeal directly to a district court pursuant to this subsection (2), additional interest and penalties shall cease to accrue while the matter is on appeal before the district court, beginning with the date the notice of appeal is received by the district court. This paragraph (d) shall not apply to tax matters representatives who do not elect to waive the administrative process.

(e) Upon receipt of the notice of appeal by the court, the executive director shall be deemed to be a party to such appeal, and the clerk of the district court shall docket the cause as a civil action. The appellant shall cause summons to be issued and cause the same to be served upon the executive director in accordance with the manner provided by law in civil cases. The answer of the executive director shall contain a brief, plain statement of the legal issues, a detailed itemization of the total amount in controversy, and any proposal regarding the joinder or consolidation of related parties and appeals.

(f) Any transferee of the tax credit or any other person who has claimed a tax credit related to the tax matters representative's claimed conservation easement tax credit shall be allowed to intervene as a matter of right pursuant to the Colorado rules of civil procedure.

(g) Notice of the date of any hearing or any phase of the trial shall be mailed to the tax matters representative, any other party, and to the executive director at least thirty days prior thereto.

(h) Jurisdiction to hear and determine appeals pursuant to this section is conferred upon the district courts of this state. A court, in its discretion, may allow for the assertion, consolidation, and settlement of any claims at law or at equity, for the intervention of additional parties, and for such other matters as the court deems appropriate in accordance with any applicable laws or court rules governing such issues; except that resolution of disputes between private parties may be limited to the third phase of the case as described in paragraph (m) of this subsection (2). In determining matters regarding joinder or consolidation, the court may consider common issues of law and fact, including but not limited to ownership of the property subject to the easement, relationships of taxpayers, and location of the easements.

(i) Following the court's order identifying the parties and consolidating cases and parties, the court may hold a hearing to determine the validity of the conservation easement credit claimed pursuant to section 39-22-522 and to determine any other claims or defenses touching the regularity of the proceedings. The court shall determine whether the donation is eligible to qualify as a qualified conservation contribution. The court may set an expedited briefing schedule and give the matter priority on the docket. The court may order preliminary discovery, limited to validity of the easement credits and any other claims or defenses raised at this stage of the proceeding.

(j) Upon a determination of validity of the credit as claimed, the court may schedule a case management conference with all parties to the proceeding. Any case management conference shall address the proceedings as set forth in paragraph (m) of this subsection (2). Prior to the case management conference, the court may order all parties to make the following disclosures:

(I) The department of revenue shall disclose, consistent with any orders of the court, individuals with knowledge of, and documents related to:

(A) Notices to the tax matters representative disallowing the conservation easement credit;

(B) Notices to any taxpayer of deficiency or rejection of claim for refund;

(C) Correspondence with the tax matters representative or donee of the easement as well as any party to the conservation easement tax credit action;

(D) Appraisals and review appraisals or other expert reports used in connection with review of the tax matters representative's application for tax credit;

(E) Tax returns of the tax matters representative, transferee, or any party to the conservation easement tax credit action, for relevant tax years; and

(F) Statements of adjustment.

(II) The tax matters representative shall disclose individuals with knowledge of, and documents related to:

(A) Tax returns for the relevant tax years;

(B) The appraisal used to determine the value of the easement;

(C) The conservation easement deed and amendments;

(D) Agreements between the tax matters representative and the transferees; and

(E) Any other expert report, basis, or other evidence relating to the valuation and substantiation of the amount of the underlying easement or credit.

(III) Transferees or other persons claiming all or part of the conservation easement tax credit who are parties to the conservation easement tax credit action shall disclose individuals with knowledge of, and documents related to:

(A) Agreements related to the transfer of credits;

(B) Tax returns for the relevant tax years; and

(C) Any other expert report, basis, or other evidence relating to the valuation and substantiation of the amount of the underlying easement or credit.

(k) The court may make any order it deems appropriate to control and limit discovery to avoid unnecessary duplication between or among parties, including setting such limitations in accordance with the phases of the proceedings as set forth in paragraph (m) of this subsection (2).

(l) In advance of the trial date, the court may require the parties to confer and submit a proposed trial management order to the court.

(m) After a determination pursuant to paragraph (i) of this subsection (2) of the validity of the credit as claimed, the court shall resolve all remaining issues as follows:

(I) The first phase shall be limited to issues regarding the value of the easement.

(II) The second phase shall be limited to determinations of the tax, interest, and penalties due and apportionment of such tax liability among persons who claimed a tax credit in relation to the conservation easement. The conservation easement tax credit action shall be final at the conclusion of the second phase as to the department of revenue and as to any taxpayer, transferee, or other party with regard to that party's tax credit dispute with the department of revenue.

(III) The third phase shall address all other claims related to the conservation easement tax credit, including those between and among the tax matters representative, transferees, other persons claiming a tax credit in connection with the donation, and any third party joined as a party to the action. The department shall not be required to participate in or be a party to this third phase. Any participation in these proceedings by parties other than the tax matters representative, transferees, or other persons who have claimed all or part of a conservation easement tax credit is limited to this third phase.

(n) The district court shall hear the appeal in accordance with the Colorado rules of civil procedure and the rules of evidence.

(o) The chief justice of the supreme court may designate judges to hear appeals brought pursuant to this subsection (2), and may determine that only judges so designated may hear such appeals. For the convenience of the parties and in order to facilitate the use of available court facilities, hearings may be conducted at the discretion of the court in any county within the region for which venue has been established for a case pursuant to paragraph (b) of this subsection (2).

(p) The district court shall enter judgment on its findings. The court shall have the authority to establish the amount of any deficiency and to waive or otherwise modify the amount of any interest, penalties, or other amounts owed. The court shall indicate in any order whether the judgment of the court is a final judgment subject to appeal as to any party.

(q) It is the intent of the general assembly that any appeals brought pursuant to this subsection (2) shall be expedited to the extent practicable and administered in the manner deemed most efficient and fair by the courts.

(3) A tax matters representative who does not make an election to waive a hearing pursuant to subsection (2) of this section and appeal directly to a district court may send a written request for hearing and final determination by certified mail to the executive director on or before October 1, 2011. If a tax matters representative files a request pursuant to this subsection (3), the executive director shall issue a final determination on or before July 1, 2014, unless the executive director and the tax matters representative mutually agree in writing to extend such date to a specified date. The executive director shall send a copy of the final determination to the tax matters representative by certified mail on or before July 1, 2014. If the United States post office returns the final determination as undeliverable by certified mail, the department shall then mail the final determination in accordance with section 39-21-105.5. This subsection (3) shall apply only to those tax matters representatives for which a notice of deficiency, notice of disallowance, or notice of rejection of refund claim has been mailed by the department of revenue as of May 1, 2011, but for which a final determination has not been issued before May 19, 2011.

(4) The executive director shall issue a final determination on or before July 1, 2016, for any tax matters representative who does not make an election to waive a hearing pursuant to subsection (2) of this section or file a written request for final hearing and final determination with the executive director pursuant to subsection (3) of this section. The executive director shall send a copy of the final determination to the tax matters representative by certified mail on or before July 1, 2016. If the United States post office returns the final determination as undeliverable by certified mail, the department shall then mail the final determination in accordance with section 39-21-105.5. If a tax matters representative does not make an election to waive a hearing pursuant to subsection (2) of this section or file a written request for final hearing and final determination with the executive director pursuant to subsection (3) of this section, any person who has claimed a credit or who may be eligible to claim a tax credit in relation to the tax matters representative's donation may

petition the department on or before November 1, 2011, to change the tax matters representative's designation. The executive director shall promulgate rules on or before September 1, 2011, specifying the procedures for a change to the tax matters representative's designation when the executive director determines that the tax matters representative is unavailable or unwilling to act as the tax matters representative. If the department grants the petition, the new tax matters representative may file an appeal pursuant to subsection (2) of this section or file a written request for final hearing and final determination with the executive director pursuant to subsection (3) of this section within thirty days of the department's order regarding the petition. This subsection (4) shall apply only to those tax matters representatives for which a notice of deficiency, notice of disallowance, or notice of rejection of refund claim has been mailed by the department of revenue as of May 1, 2011, but for which a final determination has not been issued before May 19, 2011.

(5) In order to expedite the equitable resolution of requests for an administrative hearing regarding any conservation easement tax credit, avoid inconsistent determinations, and allow the executive director or the executive director's designee to consider the full scope of applicable issues of law and fact, the executive director or the executive director's designee shall have discretion to issue orders as set forth in paragraphs (a) to (e) of this subsection (5) as follows:

(a) To consolidate cases involving common or related issues of fact or law. In identifying related cases, the executive director or the executive director's designee may consider any common issues of law or fact, including but not limited to common ownership of the property subject to the easement, relationships of the taxpayers, and location of the easements.

(b) To issue a final order finding that a case cannot reasonably be resolved through the administrative process and transferring jurisdiction of the case to the district court in accordance with subsection (2) of this section. Such a final order may issue for reasons including but not limited to a waiver of administrative process pursuant to paragraph (a) of subsection (2) of this section by another tax matters representative where consolidation would otherwise be appropriate pursuant to paragraph (a) of this subsection (5). Prior to issuance of such a final order, the parties shall have the opportunity to file written briefs addressing the proposed transfer.

(c) If a tax matters representative fails to appear at a hearing or the tax matters representative has failed to adequately participate in such hearing, including but not limited to a failure to file the required pleadings or to appear at a scheduled conference, the executive director may without further proceedings issue a final determination.

(d) To invite participation in the administrative process by any person who may be affected or aggrieved by a final determination, including but not limited to transferees. Such participation shall include the right to be admitted as a party to a hearing. Upon the person's filing of a written request setting forth a brief and plain statement of the facts that entitle the person to be admitted and the matters to be decided, the executive director or the executive director's designee shall have the authority to admit such person for limited purposes. This process shall be available only to persons who have claimed a credit or who may be eligible to claim a tax credit in relation to the conservation easement.

(e) If a tax matters representative has not provided any document related to the credit that was required to be provided as part of the taxpayer's return, including the return itself, or, if requested by the department, a copy of the complete appraisal obtained at the time of donation, the department may send a written request to the taxpayer for such document. Failure to provide the requested documents within sixty days of any such request shall constitute grounds for the issuance of a final determination denying the credit.

(6) For any tax matters representative for which the executive director issued a final determination on or after May 1, 2011, the tax matters representative may appeal the final determination of the executive director pursuant to the provisions of section 39-21-105. The procedure governing such appeal shall be in accordance with the provisions of subsection (2) of this section; except that paragraphs (a), (c), and (d) of said subsection (2) shall not apply. If a tax matters representative fails to file a timely appeal pursuant to this subsection (6), any person who has claimed a credit or who may be eligible to claim a tax credit in relation to the tax matters representative's donation may petition the department to change

the tax matters representative's designation within ten days after the final date for filing an appeal. The executive director shall promulgate rules on or before September 1, 2011, specifying the procedures for a change to the tax matters representative's designation when the executive director determines that the tax matters representative is unavailable or unwilling to act as the tax matters representative. If the department of revenue grants the petition, the new tax matters representative may file an appeal pursuant to the provisions of this subsection (6) within thirty days of the department's order regarding the petition.

(7) If the executive director fails to issue a final determination on or before the dates specified or agreed to in subsection (3) or (4) of this section, the authority of the executive director to dispute the claim of the credit shall be waived, the full amount of the credit in dispute shall be allowed, and no interest or penalties shall be imposed upon such amount.

(8) On or before August 1, 2011, the conservation easement oversight commission created in section 12-61-721 (1), C.R.S., shall review conservation easements for which a tax credit is claimed pursuant to sections 39-22-522 (3.5) (a) and 12-61-721 (3), C.R.S., and for which a notice of deficiency, notice of rejection of refund claim, or notice of disallowance issued on or before May 1, 2011, but for which a final determination has not been issued before May 19, 2011, and for which the commission has not already reviewed the credit. For each conservation easement tax credit claim so reviewed, the commission shall issue an initial recommendation to the executive director on whether each credit claimed by a taxpayer who is eligible to waive a hearing and appeal a notice of deficiency, notice of rejection of refund claim, or notice of disallowance may be denied or accepted. No other information shall be required of the commission on or before such date.

(9) The executive director shall send a notice to each tax matters representative eligible to waive a hearing and appeal a notice of deficiency, notice of rejection of refund claim, or notice of disallowance to a district court pursuant to subsection (2) of this section to notify the tax matters representative of the provisions of this section. The notice shall be sent by certified mail to the tax matters representative's last-known address on or before July 1, 2011. If the United States post office returns the notice as undeliverable by certified mail, the department shall then mail the notice in accordance with section 39-21-105.5. The notice shall not be included with any other mailing and shall include the words "Important Tax Document Enclosed" on the exterior of the mailing. The executive director shall further provide notice of the provisions of this section on the department of revenue's web site and by such other means as the executive director deems appropriate. The executive director shall maintain adequate records to verify compliance with the provisions of this subsection (9).

(10) If the executive director makes a determination that the tax matters representative has transferred a disputed credit to another person who has not claimed the credit or that a person who claimed or may claim a disputed credit pursuant to section 39-22-522 cannot be identified or located, the executive director shall provide notice to such person as follows:

(a) The executive director shall file an affidavit with the district court having jurisdiction over an appeal of the credit setting forth that the executive director has made diligent inquiry and has been unable to locate such person.

(b) The district court shall then order a notice to be published by the department of revenue in some local newspaper of general circulation named by the judge and on the department's web site. The notice shall identify the property that is subject to the conservation easement and the date of the donation, and shall explain the right of the person to request joinder in the action on the disputed credit before the court, the time and place at which such request must be filed, and the title and address of the court at which the request must be filed.

(11) If a tax matters representative proceeds with the hearing process before the executive director rather than appeal to a district court pursuant to subsection (2) of this section and either the tax matters representative or one or more transferees pays an amount on or before June 30, 2012, that satisfies a deficiency in an amount agreed to by the department of revenue for the tax owed by the tax matters representative or the transferee, all additional amounts of penalties and interest owed shall be waived.

(12) On or before July 1, 2011, and on a quarterly basis thereafter, the executive director shall provide a report to the joint budget committee and the finance committees of the general assembly describing:

(a) The number of tax credits claimed pursuant to section 39-22-522 for which the executive director mailed a notice of deficiency, notice of rejection of refund claim, or notice of disallowance pursuant to section 39-21-103;

(b) The number of such cases sent to the conservation easement oversight commission for review pursuant to section 12-61-721, C.R.S.;

(c) The number of such cases returned to the executive director with the advice of the conservation easement oversight commission created in section 12-61-721 (1), C.R.S., and the action, if any, taken by the department of revenue on the cases returned by the commission;

(d) The number and progress of any cases that are in a mediation process and the status of such mediation;

(e) The number of cases referred to the attorney general's office for resolution;

(f) The number of cases finally resolved by the department of revenue;

(g) The amount of deficient taxes, interest, and penalties determined to be owed or waived by the department of revenue in administering the resolution of cases;

(h) The number and total amount of credits that were originally contested but subsequently allowed to be claimed in full; and

(i) The amount of moneys expended by the department of revenue in administering the resolution of cases.

(13) On or before March 15, 2012, and on a quarterly basis thereafter, the state court administrator shall provide a report to the joint budget committee and the finance committees of the general assembly describing:

(a) The number of taxpayers electing to appeal pursuant to subsection (2) of this section;

(b) The number of cases pending before the district courts or on appeal before other courts;

(c) The number of cases finally resolved;

(d) The amount of moneys estimated to have been expended by the courts in administering the appeals; and

(e) The amount of deficient taxes, interest, and penalties determined to be owed or waived in connection with the appeals.

(14) Prior to the issuance of a final determination or the conclusion of an appeal of a notice of deficiency, notice of disallowance, or notice of rejection of refund claim for a tax credit claimed by a tax matters representative or a transferee pursuant to section 39-22-522, the executive director shall cease all actions to collect any amount of the disputed taxes, interest, or other charges asserted to be owed. The executive director shall provide notice of the provisions of this subsection (14) in accordance with subsection (9) of this section.

Source: L. 2011: Entire section added, (HB 11-1300), ch. 193, p. 741, § 1, effective May 19.

39-22-523. Credit against tax - contributions to high technology scholarship program - mechanism to refund excess state revenues. (Repealed)

Source: L. 2000: Entire section added, p. 1319, § 2, effective August 2. **L. 2010:** Entire section repealed, (SB 10-212), ch. 412, p. 2032, § 1, effective July 1; entire section repealed, (HB 10-1256), ch. 133, p. 440, § 4, effective August 11.

39-22-524. Tax credit for individuals contributing matching funds for individual development accounts - repeal. (Repealed)

Source: **L. 2000:** Entire section added, p. 1473, § 2, effective May 31. **L. 2001:** (4) amended, p. 413, § 3, effective April 19; (5) amended, p. 396, § 7, effective August 8. **L. 2002:** (7)(a) amended, p. 863, § 6, effective August 7. **L. 2010:** (10) amended, (SB 10-212), ch. 412, p. 2035, § 9, effective July 1.

Editor's note: Subsection (10) provided for the repeal of this section, effective July 1, 2010. (See L. 2010, p. 2035.)

39-22-525. Contributions to Colorado institute of technology - credit against tax. (Repealed)

Source: **L. 2000:** Entire section added, p. 1438, § 1, effective May 31. **L. 2002:** (1), (4)(a), and (4)(c)(I) amended, p. 227, § 1, effective April 5. **L. 2007:** Entire section repealed, p. 27, § 1, effective August 3; entire section repealed, p. 58, § 2, effective August 3.

39-22-526. Credit for redevelopment of contaminated land - repeal. (1) For tax years commencing on or after January 1, 2000, but before January 1, 2011, there shall be allowed to any person who meets the following requirements a credit against the income taxes imposed by this article for any approved environmental remediation for the purpose of redevelopment:

(a) The property where the environmental remediation takes place and which is proposed for redevelopment must be located within a municipality that has a population of ten thousand or more persons.

(b) The person seeking the credit must possess a certificate issued by the Colorado department of public health and environment pursuant to section 25-16-306 (5), C.R.S.

(2) The tax credit allowed under this section shall not exceed fifty percent of the first one hundred thousand dollars expended for the approved remediation, thirty percent of the next one hundred thousand dollars expended for the approved remediation and twenty percent of the next one hundred thousand dollars expended for the approved remediation. Under no circumstances shall a tax credit be allowed for expenditures exceeding three hundred thousand dollars on any individual project.

(3) If the credit allowed by this section exceeds the tax otherwise due, the excess may be carried forward and shall be claimed on the earliest possible subsequent tax return for a period not to exceed five years.

(4) This section is repealed, effective December 31, 2015.

Source: **L. 2000:** Entire section added, p. 891, § 2, effective January 1, 2001. **L. 2005:** IP(1) and (4) amended, p. 1471, § 1, effective June 7.

39-22-527. Agricultural value-added tax credit. (Repealed)

Source: **L. 2001:** Entire section added, p. 628, § 3, effective May 30. **L. 2010:** Entire section repealed, (SB 10-212), ch. 412, p. 2032, § 1, effective July 1.

39-22-528. Tax credit for participation in agriculture value-added cash fund. (Repealed)

Source: **L. 2001:** Entire section added, p. 628, § 3, effective May 30. **L. 2010:** Entire section repealed, (SB 10-212), ch. 412, p. 2032, § 1, effective July 1.

39-22-529. Business expense deduction - labor services - unauthorized alien - definitions. (1) As used in this section, unless the context otherwise requires:

(a) "Labor services" means the physical performance of services in this state.
(b) "Unauthorized alien" shall have the same meaning as set forth in 8 U.S.C. sec. 1324a (h) (3), as amended.

(2) On or after January 1, 2008, no wages or remuneration for labor services paid to an unauthorized alien of six hundred dollars or more in a year shall be claimed as a deductible business expense for state income tax purposes by a taxpayer who, at the time the taxpayer hired the unauthorized alien, knew of the unauthorized status of the alien. The provisions of this subsection (2) shall apply regardless of whether an internal revenue service form 1099-MISC is issued in conjunction with the wages or remuneration.

(3) This section shall not apply to:

(a) Any business domiciled in the state that is exempt from compliance with federal employment verification procedures under federal law that makes the employment of unauthorized aliens unlawful;

(b) Any individual hired by the taxpayer before December 31, 2006;

(c) Any taxpayer where the individual being paid is not directly compensated or employed by the taxpayer; or

(d) Wages or remuneration paid for labor services to any individual who holds and presents to the taxpayer a valid license or identification card issued by the department of revenue.

(4) The executive director is authorized to prescribe forms and promulgate rules that are necessary to administer this section.

Source: Referred 2006: Entire section added, L. 2006, 1st Ex. Sess., p. 2, § 3, effective December 31.

Editor's note: This section was enacted by House Bill 06S-1020 at the first extraordinary session of the sixty-fifth general assembly. That bill contained a referendum clause and was approved by a vote of the registered electors of the state of Colorado on November 7, 2006. This section was effective upon proclamation of the governor, December 31, 2006. The vote count for the measure was as follows:

FOR: 744,475

AGAINST: 722,651

ANNOTATION

Law reviews. For article, "2006 Immigration Legislation in Colorado", see 35 Colo. Law. 79 (October 2006).

39-22-530. Credit for employers that hire persons with developmental disabilities - definitions. (1) As used in this section, unless the context otherwise requires:

(a) "Designated county" means the counties of Adams, Arapahoe, El Paso, Jefferson, Logan, Montrose, and Morgan.

(b) "Developmental disability" shall have the same meaning as set forth in section 27-10.5-102 (11) (a), C.R.S., and in the rules adopted by the department of human services pursuant to section 27-10.5-103 (2), C.R.S.

(c) "Person with a developmental disability" shall have the same meaning as set forth in section 27-10.5-102 (11) (b), C.R.S.

(d) "Qualified employee" means an employee first hired on or after January 1, 2009, who is:

(I) A person with a developmental disability;

(II) Employed at a workplace located in a designated county; and

(III) Compensated in accordance with applicable minimum wage laws.

(e) "Taxpayer" means an employer that deducts and withholds amounts from the wages paid to a qualified employee pursuant to section 39-22-604 (3).

(2) (a) For the income tax years beginning January 1, 2009, through January 1, 2011, a credit against the tax imposed by this article shall be allowed to a taxpayer who hires a qualified employee during that period.

(b) The amount of the credit allowed by this section is fifty percent of the amount of gross wages paid to a qualified employee during the employee's first three months of continuous employment and thirty percent of the amount of gross wages paid to a qualified employee during the employee's subsequent nine months of continuous employment.

(3) A taxpayer may claim the credit allowed by this section for the income tax year in which the wages on which the credit is based are paid to a qualified employee. If the amount of the credit exceeds a taxpayer's actual tax liability for an income tax year, the amount of the credit not used to offset income tax liability for the income tax year shall not be allowed as a refund, but the taxpayer may claim the excess amount of the credit in a subsequent income tax year; except that the credit allowed by this section may not be claimed for any income tax year beginning after January 1, 2011. Any amount of the credit that is not used shall not be refunded to the taxpayer. A taxpayer may not claim the credit allowed by this section more than once for the same qualified employee.

(4) A partnership, S corporation, limited liability company, or other entity electing not to be taxed as a corporation may pass through the credit allowed by this section in a tax year to its participating partners, shareholders, or members, referred to in this subsection (4) as the "investors", in any percentage the entity chooses, up to the amount of the credit earned in the tax year. Credits earned but unclaimed in a tax year for which the entity elects to be taxed as a corporation may not be distributed to investors in a later tax year for which the entity elects not to be taxed as a corporation. In a tax year for which the entity elects not to be taxed as a corporation, all credits passed through to investors may be carried forward at the investor level for the carryover period specified in subsection (3) of this section.

(5) (a) If the revenue estimate prepared by the staff of the legislative council in December 2008, December 2009, or December 2010 indicates that the amount of total general fund revenues for the current fiscal year will not be sufficient to grow the total state general fund appropriations by six percent over such appropriations for the previous fiscal year, then the credit authorized by this section shall not be allowed for the income tax year following the year in which the estimate is prepared; except that a taxpayer who would have been eligible to claim a credit pursuant to this section in an income tax year in which the credit is not allowed may claim the credit in the next income tax year in which the revenue estimate indicates that the amount of total general fund revenues will be sufficient to grow the total state general fund appropriations by six percent over such appropriations for the previous fiscal year.

(b) On or before January 1, 2009, January 1, 2010, and January 1, 2011, the department of revenue shall publish a notice on its web site indicating whether the credit authorized by this section is allowed pursuant to paragraph (a) of this subsection (5) for the income tax year beginning on that day.

Source: L. 2008: Entire section added, p. 2203, § 1, effective August 5. **L. 2009:** (1)(b) amended, (SB 09-044), ch. 57, p. 210, § 19, effective March 25; (5)(a) amended, (SB 09-228), ch. 410, p. 2265, § 20, effective July 1.

39-22-531. Colorado job growth incentive tax credit - rules - definitions - repeal.

(1) As used in this section, unless the context otherwise requires:

(a) (I) "Affiliated group" means one or more chains of persons connected through stock or other ownership interests with a person if:

(A) One or more of the other persons in the chain owns interests possessing more than fifty percent of the voting power of all classes of ownership interests except ownership interests of the common parent and more than fifty percent of each class of nonvoting ownership interests of each of the persons except ownership interests of the common parent; and

(B) The common parent owns interests possessing more than fifty percent of the voting power of all classes of ownership interests and more than fifty percent of each class of the nonvoting ownership interests of at least one of the other persons in the chain.

(II) As used in this paragraph (a), the term “ownership interest” does not include nonvoting stock that is limited and preferred as to dividends; employer securities, within the meaning of section 409 (1) of the internal revenue code, while such securities are held under a tax credit employee stock ownership plan; or qualifying employer securities, within the meaning of section 4975 (e) (8) of the internal revenue code, while such securities are held under an employee stock ownership plan that meets the requirements of section 4975 (e) (7) of the internal revenue code.

(III) As used in this paragraph (a), the term “person” does not include natural persons.

(b) “Commission” means the Colorado economic development commission created in section 24-46-102, C.R.S.

(c) “Credit certificate” means a statement issued by the commission certifying that the project qualifies for the job growth incentive tax credit allowed in this section and specifying the amount of the credit allowed.

(d) “Credit period” means a period of up to sixty consecutive months for which a taxpayer may claim a credit allowed in this section that is calculated annually by the commission. The credit period shall not extend past December 31, 2018.

(e) “Department” means the department of revenue.

(f) “Net job growth” means the difference between the total number of full-time equivalent employees employed by the taxpayer in the state for the project at the end of each calendar year of the project and the total number of full-time equivalent employees employed by the taxpayer in the state for the project at the commencement of the project.

(g) “Person” shall have the same meaning as provided in section 39-21-101 (3).

(h) “Project” means a project that encourages, promotes, and stimulates economic development in key economic sectors, including, but not limited to, aerospace, bioscience, life science, clean energy technology, tourism, film and television production, and information technology, and that is approved by the commission as specified in subsection (3) of this section.

(i) “Taxpayer” means any person doing business in the state. For purposes of this section, taxpayer includes an affiliated group.

(2) For income tax years commencing on or after January 1, 2009, but prior to January 1, 2015, at the discretion of the commission as specified in subsection (3) of this section, there may be allowed to any taxpayer an annual job growth incentive tax credit with respect to the income taxes imposed by this article that a taxpayer may claim for a credit period in an amount determined by the commission pursuant to subsection (5) of this section.

(3) The commission may approve any job growth incentive tax credits allowed pursuant to subsection (2) of this section subject to the following:

(a) During a credit period a project shall:

(I) (A) Except as provided in sub-subparagraph (B) of this subparagraph (I), bring a net job growth of at least twenty new jobs to the state with an average yearly wage of at least one hundred ten percent of the average yearly wage of the county in which the taxpayer is located.

(B) If the project will be located in a designated enhanced rural enterprise zone as such zone is described in section 39-30-103.2 (1) and the local community of the designated enhanced rural enterprise zone provides rationale to the commission outlining the project’s economic importance to the community, the project shall, during a credit period, bring a net job growth of at least five new jobs to the state with an average yearly wage of at least one hundred ten percent of the average yearly wage of the enhanced rural enterprise zone in which the taxpayer is located.

(II) Result in the retention of any new employees hired for the project for at least one year; and

(III) Be approved by the commission only if the project would not occur but for the credit allowed in this section.

(b) A taxpayer shall submit a complete written application for a credit allowed in this section to the commission before the project commences in the state. The application shall include:

(I) An identification of the specific jobs that will be created.

(II) An identification of the cost differential in the projected costs of the project compared to the projected costs were the project commenced in a competing state. The cost differential shall include any impact of the competing state's incentive programs and may include:

(A) Specific costs for labor, utilities, taxes, and any other costs of a competing state's site; and

(B) The cost structure of the taxpayer's industry in the competing state.

(III) Documentation to demonstrate that without the credit allowed in this section, the project would not occur in this state. Such documentation shall include information that indicates that:

(A) The taxpayer could reasonably and efficiently locate the project outside of this state;

(B) At least one other state is being considered for the project;

(C) Receipt of the credit allowed in this section is a major factor in the taxpayer's decision; and

(D) Without the credit allowed in this section, the taxpayer is not likely to commence the project in the state.

(c) In the exercise of the commission's discretion granted by this subsection (3), the commission shall only consider the following:

(I) The economic health of this state;

(II) The economic viability of the proposed new jobs;

(III) The economic benefits to the state of the new jobs; and

(IV) The maximum amount of the credit needed to attract the new jobs to this state.

(4) (a) (I) The commission shall review each application for a credit allowed in this section submitted by any taxpayer. Based on the application submitted, the commission may offer conditional approval to a taxpayer for a credit. The conditional approval shall include the maximum amount of the credit available to the taxpayer for the credit period calculated pursuant to paragraph (a) of subsection (5) of this section and the specific terms that shall be met to qualify for the credit.

(II) A taxpayer that receives conditional approval for a credit allowed in this section shall notify the commission promptly if the project is canceled or otherwise becomes ineligible for the estimated credit, in which case the conditional approval may be canceled. The conditional approval shall be void and any credit claimed shall be repaid if a taxpayer that receives conditional approval does not commence the project within one and a half years of the receipt of the conditional approval or fails to meet the terms of subsection (3) of this section.

(b) By March 1 of the calendar year after the commencement of the project, and each March 1 of any calendar year following a year of the credit period, a taxpayer that received conditional approval as specified in paragraph (a) of this subsection (4) shall submit an annual request for a credit certificate. The request shall include documents that detail the number of employees hired for the project, the net job growth for the taxpayer, all documentation necessary to calculate the credit as specified in subsection (5) of this section, and any other information requested by the commission.

(c) If the project has commenced and the project meets or exceeds the conditions of a project as specified in paragraphs (a) and (b) of subsection (3) of this section, the commission shall calculate the annual amount of the credit allowed in this section as specified in paragraph (b) of subsection (5) of this section and shall issue a credit certificate for that calendar year in that amount to the taxpayer. The credit certificate shall be submitted by the taxpayer to the department with the taxpayer's income tax return for the tax year that includes the December 31 of the calendar year for which the credit certificate is issued.

(5) The credit allowed in this section shall be calculated by the commission as follows:

(a) For the maximum amount of the credit allowed in this section available to the taxpayer for the credit period, the commission shall multiply the estimated net job growth for each of the years in the credit period by fifty percent of the taxpayer's total estimated taxes imposed on the employer each year for the new employees of the project under the "Federal Insurance Contributions Act", 26 U.S.C. sec. 3111 (a) and (b). The maximum amount of the credit shall be the result of this calculation or such lesser amount as the

commission deems proper under its discretion as specified in paragraph (c) of subsection (3) of this section.

(b) For the annual amount of the credit allowed in this section available to the taxpayer, the commission shall multiply the actual net job growth for that year by fifty percent of the taxpayer's taxes imposed on the employer for the new employees of the project under the "Federal Insurance Contributions Act", 26 U.S.C. sec. 3111 (a) and (b). The amount of the credit allowed in this section shall be the result of this calculation; except that no credit certificate shall be issued if the aggregate of all credits claimed or to be claimed by the taxpayer, including the current credit certificate, exceeds the maximum amount of the credit as calculated pursuant to paragraph (a) of this subsection (5).

(6) If the amount of the credit allowed in this section exceeds the amount of income taxes otherwise due on the taxpayer's income in the income tax year for which the credit is being claimed, the amount of the credit not used as an offset against income taxes in the current income tax year may be carried forward and used as a credit against subsequent years' income tax liability for a period not to exceed ten years and shall be applied first to the earliest income tax years possible. Any credit remaining after said period shall not be refunded or credited to the taxpayer.

(7) The commission or its designee may audit the accounts of a taxpayer up to twelve months following the issuance of any credit certificate.

(8) The commission shall include information regarding all conditional approvals granted and credit certificates issued pursuant to this section, including the credits claimed, the names of the recipients of the credits, and the amounts claimed, in its annual report required to be presented to the general assembly pursuant to section 24-46-104 (2), C.R.S.

(9) If a taxpayer receiving a credit allowed in this section is a partnership, limited liability company, S corporation, or similar pass-through entity, the taxpayer may allocate the credit among its partners, shareholders, members, or other constituent taxpayers in any manner agreed to by such partners, shareholders, members, or other constituent taxpayers. The taxpayer shall certify to the commission and the department the amount of the credit allocated to each partner, shareholder, member, or other constituent taxpayer, and the commission shall issue credit certificates in the appropriate amounts to each partner, shareholder, member, or other constituent taxpayer. Each partner, shareholder, member, or other constituent taxpayer shall be allowed to claim such amount subject to any restrictions set forth in this section.

(10) No later than September 1, 2010, and no later than September 1 of each year thereafter through September 1, 2019, the commission shall provide the department with an electronic report of the taxpayers receiving a credit allowed in this section for the preceding calendar year or any fiscal year ending in the preceding calendar year, and any credits disallowed pursuant to subparagraph (II) of paragraph (a) of subsection (4) of this section for any year, that includes the following information:

- (a) The taxpayer's name;
- (b) The taxpayer's Colorado account number and federal employer identification number;
- (c) The amount of the credit allowed in this section; and
- (d) Any associated taxpayer's names, Colorado account numbers, and federal employer identification numbers or social security numbers, if the credit allowed in this section is allocated from a pass-through entity pursuant to subsection (9) of this section.

(11) The executive director of the department may promulgate rules as may be necessary to administer and enforce any provision of this section. The rules shall be promulgated in accordance with article 4 of title 24, C.R.S.

(12) Any taxpayer who offsets a tax deficiency with a credit allowed in this section that is disallowed pursuant to this section shall be liable for such tax deficiency, interest, and penalties as may be specified in this article or otherwise provided by law.

(13) This section is repealed, effective January 1, 2025.

ANNOTATION

Law reviews. For article, "Applying for the Colorado Job Growth Incentive Tax Credit", see 39 Colo. Law. 83 (January 2010).

39-22-532. Colorado innovation investment tax credit - definitions. (1) As used in this section, unless the context otherwise requires:

(a) "Colorado innovation investment tax credit" or "tax credit" means the credit against income tax created in this section.

(b) "Qualified investment" shall have the same meaning as set forth in section 24-48.5-112 (1) (e), C.R.S.

(c) "Qualified investor" shall have the same meaning as set forth in section 24-48.5-112 (1) (f), C.R.S.

(d) "Qualified small business" shall have the same meaning as set forth in section 24-48.5-112 (1) (g), C.R.S.

(e) "Tax credit certificate" means a tax credit certificate issued to a qualified investor pursuant to section 24-48.5-112 (3), C.R.S.

(2) There shall be allowed a Colorado innovation investment tax credit against the income taxes imposed pursuant to this article for a qualified investment in a qualified small business. The amount of the credit is the amount determined and authorized by the Colorado office of economic development pursuant to section 24-48.5-112, C.R.S., and set forth in a tax credit certificate.

(3) To claim the Colorado innovation investment tax credit, the taxpayer shall attach to the taxpayer's tax return a copy of the tax credit certificate. No tax credit is allowed under this section unless the taxpayer provides the copy of the tax credit certificate.

(4) If the allowable Colorado innovation investment tax credit exceeds the amount of income tax due on the income of the taxpayer for the tax year during which the qualified investment was made, the amount of the tax credit not used as an offset against income taxes in such income tax year shall not be allowed as a refund, but may be carried forward and applied against the income tax due in each of the five succeeding income tax years, but shall be first applied against the income tax due for the earliest of the income tax years possible. Any amount of the tax credit that is not used after said period shall not be refundable.

(5) Individuals who are co-owners of a business, including partners in a partnership and shareholders of an S corporation, may each claim only their individual pro rata shares of the Colorado innovation investment tax credit allowed under this section based on their ownership interests. The total of the tax credits allowed to all such owners may not exceed the amount that would have been allowed to a sole owner.

(6) If the department of revenue determines that there has been a misrepresentation on an application submitted to the Colorado office of economic development pursuant to section 24-48.5-112, C.R.S., the department of revenue shall deny the Colorado innovation investment tax credit if the misrepresentation relates to whether the applicant was a qualified investor or made a qualified investment. If the misrepresentation relates to whether the investment was made to a qualified small business, the department of revenue shall deny the tax credit only if the applicant knew or should have known at any time before the certification that the representation was false.

Source: L. 2009: Entire section added, (HB 09-1105), ch. 378, p. 2059, § 4, effective September 1. L. 2011: (4) amended, (HB 11-1045), ch. 209, p. 907, § 3, effective May 23.

Cross references: For the legislative declaration in the 2011 act amending subsection (4), see section 1 of chapter 209, Session Laws of Colorado 2011.

39-22-533. Instream flow incentive tax credit for water rights holders - rules - definitions - repeal. (1) As used in this section, unless the context otherwise requires:

(a) "Board" means the Colorado water conservation board created in section 37-60-102, C.R.S.

(b) "Credit certificate" means a statement issued by the board certifying that a given water right donation qualifies for the credit authorized in this section and specifying the amount of the credit allowed.

(c) "Department" means the department of revenue.

(d) "Owner of a water right" means a taxpayer who owns a water right.

(e) "Person" means any individual, firm, corporation, partnership, limited liability company, joint venture, estate, trust, or group or combination acting as a unit that donates during the taxable year all or part of a water right to the board with the intent that such right be converted to an instream flow right pursuant to section 37-92-102 (3), C.R.S.

(f) "Taxpayer" has the same meaning as set forth in section 39-21-101 (4).

(g) "Water right" means a right to use in accordance with its priority a certain portion of the waters of the state by reason of the appropriation of the same.

(h) "Waters of the state" means all surface and underground water in or tributary to all natural streams within the state of Colorado, except waters referred to in section 37-90-103 (6), C.R.S.

(2) (a) Except as provided in subsection (6) of this section, for income tax years commencing on or after January 1, 2009, but prior to January 1, 2015, there may, at the discretion of the board, be allowed to any person an instream flow incentive tax credit with respect to the income taxes imposed by this article in the amount determined by the board pursuant to paragraph (b) of this subsection (2).

(b) The board shall have the exclusive authority to approve any instream flow incentive tax credits allowed pursuant to paragraph (a) of this subsection (2). The credit shall only be available for permanent transfers of water rights acquired pursuant to the board's public review process specified in 2 CCR 408-2, paragraphs 6m. and 11., and upon a finding by the board, in accordance with section 37-92-102 (3), C.R.S., that the proposed donation will preserve the environment to a reasonable degree. The credit shall not be available for a water right that is decreed for irrigation on land for which a conservation easement tax credit is claimed pursuant to section 39-22-522 unless such water right is specifically excluded from the terms of such conservation easement. The board shall approve a credit by issuing to the person a credit certificate on or before September 1 of the tax year in which the donation is accepted.

(c) The amount of a credit authorized in this section shall be determined by the board, subject to the following guidelines:

(I) The credit shall be in an amount equal to or less than one-half of the value of the water right proposed to be donated to the board;

(II) The value of the water right shall be determined by the board, in consultation with the proposed donor. In determining the value of the water right, the board may consider, in addition to other factors the board deems appropriate, the following:

(A) Any appraisal or other documentation submitted by the donor;

(B) The seniority, historic consumptive use, and decreed use of the water right;

(C) The location of the existing point of diversion of the water right; and

(D) The extent to which aquatic and riparian habitat would be preserved by conversion of the water right to an instream flow.

(d) In no event shall the board issue a credit certificate if the aggregate sum of credits approved by the board pursuant to this section and not yet eligible to be taken as described in subsection (6) of this section exceeds two million dollars.

(e) No later than January 30, 2010, and no later than January 30 each year thereafter, the board shall report to the finance committees of the senate and house of representatives, the agriculture and natural resources committee of the senate, and the agriculture, livestock, and natural resources committee of the house of representatives, or any successor committees, regarding all instream flow rights acquired and tax credit certificates issued pursuant to this section.

(3) If a person receiving a credit authorized in this section is a partnership, limited liability company, S corporation, or similar pass-through entity, the person may allocate the credit among its partners, shareholders, members, or other constituent taxpayers in any manner agreed to by such persons. The person shall certify to the board and the department the amount of credit allocated to each constituent taxpayer, and the board shall issue credit

certificates in the appropriate amounts to each partner, shareholder, member, or other constituent taxpayer. Each constituent taxpayer shall be allowed to claim such amount subject to any restrictions set forth in this section.

(4) If a credit authorized in this section approved by the board exceeds the income tax due on the income of the taxpayer for the taxable year, the excess credit may not be carried forward and shall be refunded to the taxpayer.

(5) No later than November 30, 2009, and no later than November 30 of each year thereafter, the board shall provide the department an electronic report of the taxpayers receiving a credit for that income tax year that includes the following information:

- (a) The taxpayer's name;
- (b) The taxpayer's Colorado account number or social security number;
- (c) The amount of the credit allocated; and
- (d) The associated pass-through entity name and Colorado account number if the credit is allocated from a pass-through entity pursuant to subsection (3) of this section.

(6) If the revenue estimate prepared by the staff of the legislative council in June 2009 and each June thereafter indicates that the amount of the total general fund revenues for that particular fiscal year will not be sufficient to grow the total state general fund appropriations by six percent over such appropriations for the previous fiscal year, then the credit authorized in this section shall not be allowed for any income tax year commencing during the calendar year in which the forecast is prepared. The credit certificate shall remain valid for the next tax year in which the revenue estimate prepared by the staff of the legislative council indicates that the amount of the total general fund revenues will be sufficient to grow the total state general fund appropriations by six percent over such appropriations for the previous fiscal year.

(7) The executive director of the department may promulgate rules as may be necessary to administer and enforce any provision of this section. The rules shall be promulgated in accordance with article 4 of title 24, C.R.S., and shall be included in income tax forms.

(8) Any taxpayer who offsets a tax deficiency with a credit that is disallowed pursuant to this section shall be liable for such tax deficiency, interest, and penalties as may be specified in this article or otherwise provided by law.

(9) This section is repealed, effective December 31, 2024.

Source: L. 2009: Entire section added and (6) amended, (HB 09-1067), ch. 426, pp. 2377, 2380, §§ 1, 2, effective August 5.

39-22-534. Credit for estate taxes paid - agricultural land - recapture - definitions.

(1) (a) Except as set forth in subsection (3) of this section, for income tax years specified in paragraph (b) of this subsection (1), a person who inherits agricultural land located within the state is allowed a credit in an amount equal to the amount of estate taxes paid pursuant to article 23.5 of this title that are attributable to the transfer of such agricultural land. A taxpayer must claim the credit for the income tax year in which the estate taxes are paid. For purposes of this section, the value of the agricultural land is the current assessed valuation. If more than one person inherits the agricultural land, the tax credit is apportioned among all beneficiaries.

(b) The credit shall not apply until the first income tax year:

(I) After congress enacts a law delaying to a date after December 31, 2012, the sunset of the amendments to section 26 U.S.C. 2011 that were included in the "Economic Growth and Tax Relief Reconciliation Act of 2001", public law 107-16; and

(II) That an estate tax is owed pursuant to article 23.5 of this title.

(2) If the amount of the credit exceeds the income taxes owed by the taxpayer, the department of revenue shall refund the excess amount to the taxpayer.

(3) (a) If, within ten years from the date the income tax credit created by this section is claimed, the property that was the basis of the credit is no longer classified as agricultural land for property tax purposes, the credit shall be disallowed and, within thirty days of the change in use, the taxpayer who received the tax credit shall file an amended Colorado income tax return for the tax year that the credit was claimed. Interest shall be due on the taxes owed from the due date of the original return. Notwithstanding any provision of law

to the contrary, the annual rate of interest for an amount owed pursuant to this subsection (3) for a given year shall be equal to the rate of inflation for the prior year.

(b) Notwithstanding the provisions of section 39-21-107 (2), the assessment of the tax due as a result of any disallowance of the credit allowed by this section, plus any penalty or interest, shall be made within eleven years of the due date of the return claiming the credit. If the taxpayer does not file the amended return within the prescribed thirty-day period, then the statute of limitations shall be tolled from the end of such thirty-day period until the date that such amended return is filed with the executive director or until the executive director discovers such determination or change, whichever occurs first.

(4) As used in this section:

(a) "Agricultural land" has the same meaning as set forth in section 39-1-102.

(b) "Rate of inflation" means the annual percentage change in the United States department of labor, bureau of labor statistics, consumer price index for Denver-Boulder-Greeley, all items, all urban consumers, or its successor index.

Source: L. 2012: Entire section added, (HB 12-1042), ch. 193, p. 771, § 2, effective August 8.

Cross references: For the legislative declaration in the 2012 act adding this section, see section 1 of chapter 193, Session Laws of Colorado 2012.

PART 6

PROCEDURE AND ADMINISTRATION

SUBPART 1

GENERAL

39-22-601. Returns. (1) (a) Whenever a resident individual or a nonresident individual with income from Colorado sources is required to file a federal income tax return under the provisions of section 6012 of the internal revenue code or whenever a resident individual or a nonresident individual has incurred any tax liability under any provision of this article, the individual shall make a return that shall contain a written declaration that it is made under the penalty of perjury in the second degree. The return shall set forth, in such detail as the executive director shall prescribe by regulations, the said individual's federal taxable income, the deductions, modifications, exemptions, and credits required or allowed under this article, and any other information necessary to carry out the purposes of this article. For the purpose of this section, the residence of the individual taxpayer shall be the address supplied by the taxpayer to the department of revenue on the return.

(b) If any individual is unable to make his own return, the return shall be made by a duly authorized agent, guardian, executor, administrator, or other person charged with the care of the person or property of such taxpayer.

(c) Repealed.

(2) Every C corporation subject to taxation under this article shall make a return which shall contain a written declaration that it is made under the penalties of perjury in the second degree. Such return shall set forth, in such detail as the executive director shall prescribe by regulations, federal taxable income and the modifications and credits required or allowed under this article and any other information necessary to carry out the purposes of this article. The return shall be signed by the president, vice-president, treasurer, assistant treasurer, chief accounting officer, or other officer duly authorized to act. In cases where receivers, trustees in bankruptcy, or assignees are operating the property or business of corporations, such receivers, trustees, or assignees shall make returns for such corporations in the same manner and form as corporations are required to make returns. Any tax due on the basis of such returns shall be collected in the same manner as if collected from the corporation for which the return is made.

(2.5) (a) Every S corporation which engages in activities in this state which would subject a C corporation to the requirement to make a return under this section shall make a return which shall contain a written declaration that it is made under the penalties of perjury in the second degree. Such return shall set forth, in such detail as the executive director shall prescribe by regulations, federal taxable income and the modifications and credits required or allowed under this article and any other information necessary to carry out the purposes of this article. The return shall be signed by an officer of the S corporation duly authorized to act, which authorization shall be conclusively presumed by the signature.

(b) In addition to other information which the executive director may by regulation prescribe, the return shall set forth:

(I) The name, address, and social security or federal identification number of each shareholder of the S corporation;

(II) The income attributable to the state and the income not attributable to the state with respect to each shareholder of the S corporation as determined under subpart 2 of part 3 of this article; and

(III) The modifications required by section 39-22-323.

(c) The S corporation shall, on or before the day on which such return is filed, furnish to each person who was a shareholder of the S corporation during the year a copy of such information shown on the return as the executive director may by regulation prescribe.

(d) The department of revenue shall permit S corporations to file composite returns and to make composite payments of tax on behalf of some or all of its nonresident shareholders. The department of revenue may permit composite returns and payments to be made on behalf of resident shareholders.

(e) With respect to each of its nonresident shareholders, an S corporation shall, for each taxable period, either timely file with the department of revenue an agreement, as provided in paragraph (f) of this subsection (2.5), or make a payment to this state as provided in paragraph (h) of this subsection (2.5).

(f) The agreement referred to in paragraph (e) of this subsection (2.5) is an agreement of a nonresident shareholder of the S corporation:

(I) To file a return in accordance with the provisions of paragraph (a) of this subsection (2.5) and to make timely payment of all taxes imposed on the shareholder by this state with respect to the income of the S corporation; and

(II) To be subject to personal jurisdiction in this state for purposes of the collection of income taxes, together with related interest and penalties, imposed on the shareholder by this state with respect to the income of the S corporation.

(g) An S corporation that timely files an agreement as provided in paragraph (e) of this subsection (2.5) with respect to a nonresident shareholder of the S corporation for a taxable period shall be considered to have timely filed such an agreement for each subsequent taxable period. An S corporation that does not timely file such an agreement for a taxable period shall not be precluded from timely filing such an agreement for subsequent taxable periods. The agreement will be considered to be timely filed for a taxable period and for all subsequent taxable periods if it is filed at or before the time the annual return for such taxable period is required to be filed pursuant to paragraph (a) of this subsection (2.5).

(h) The payment referred to in paragraph (e) of this subsection (2.5) shall be in an amount equal to the highest marginal tax rate in effect under section 39-22-104 (1) multiplied by the shareholder's pro rata share of the income attributable to the state as reflected on the S corporation's return for the taxable period. An S corporation shall be entitled to recover a payment made pursuant to this paragraph (h) from the shareholder on whose behalf the payment was made. Any such payment for a taxable period must be made at or before the time the annual return for such taxable period is required to be filed pursuant to paragraph (a) of this subsection (2.5).

(i) Any amount paid by the S corporation to this state pursuant to paragraph (d) or paragraph (h) of this subsection (2.5) shall be considered to be a payment by the shareholder on account of the income tax imposed on the shareholder for the taxable period pursuant to section 39-22-104.

(3) Every fiduciary, except a receiver appointed by authority of law in possession of part only of the property of an individual, shall make a return for any individuals, estates,

or trusts for which he acts, which return shall contain a declaration that it is made under the penalties of perjury in the second degree. Such return shall set forth, in such detail as the executive director shall prescribe by regulation, the federal taxable income and the deductions, modifications, exemptions, and credits required or allowed under this article and any other information necessary to carry out the purposes of this article. The individuals, estates, or trusts for which a fiduciary acts are as follows:

(a) Every individual for whom a return is required to be filed under subsection (1) of this section;

(b) Every resident estate or trust and every nonresident estate or trust with income from Colorado sources for which a federal income tax return is required to be filed and every resident estate or trust and every nonresident estate or trust which has incurred any tax liability under any provision of this article.

(c) Repealed.

(4) Every fiduciary of an estate or trust with a nonresident beneficiary which receives net income from real or tangible personal property within Colorado shall withhold and pay over to the executive director, out of the income to be distributed to such nonresident beneficiary, a tax upon the beneficiary's share of said income computed at the rate provided in section 39-22-104 unless the nonresident beneficiary files a timely return of his total income from sources within Colorado, in which case the fiduciary shall withhold and pay over only the amount of tax disclosed by the beneficiary's return. The nonresident beneficiary, at his option within the time limited by this article, may file a return of his income and may claim a refund for the amount of tax withheld in excess of the amount of tax due as shown by said return.

(4.5) Repealed.

(5) (a) Every partnership that engages in activities in this state that would subject a C corporation to the requirement to make a return under this section shall make a return that shall contain a written declaration that it is made under the penalties of perjury in the second degree. Such return shall set forth, in such detail as the executive director shall prescribe, federal ordinary income and the modifications and credits required or allowed under this article and any other information necessary to carry out the purposes of this article. The return shall be signed by any one of the partners.

(b) In addition to other information that the executive director may prescribe, the return shall set forth:

(I) The name, address, and social security or federal identification number of each partner of the partnership;

(II) The income attributable to the state and the income not attributable to the state with respect to each partner of the partnership as determined under section 39-22-203; and

(III) The modifications required by section 39-22-202.

(c) The partnership shall, on or before the day on which the return is filed, furnish to each person who was a partner of the partnership during the year a copy of such information shown on the return as the executive director may prescribe.

(d) The department of revenue shall permit partnerships to file composite returns and to make composite payments of tax on behalf of any or all of its nonresident partners.

(e) With respect to each of its nonresident partners, a partnership shall, for each taxable period, either timely file with the department of revenue an agreement, as provided in paragraph (f) of this subsection (5), or make payment to this state, as provided in paragraph (h) of this subsection (5).

(e.5) Paragraphs (d) and (e) of this subsection (5) shall not apply to a publicly traded partnership, as defined in section 7704 (b) of the internal revenue code, that meets any of the exceptions under section 7704 (c) of the internal revenue code and is not treated as a corporation under section 7704 (a) of the internal revenue code.

(f) The agreement referred to in paragraph (e) of this subsection (5) is an agreement of a nonresident partner of the partnership:

(I) To file a return in accordance with the provisions of paragraph (a) of this subsection (5) and to make timely payment of all taxes imposed on the member by this state with respect to the income of the partnership; and

(II) To be subject to personal jurisdiction in this state for purposes of the collection of income taxes, together with related interest and penalties, imposed on the partner by this state with respect to the income of the partnership.

(g) A partnership that timely files an agreement as provided in paragraph (e) of this subsection (5) with respect to a nonresident partner of the partnership for a taxable period shall be considered to have timely filed such an agreement for each subsequent taxable period. A partnership that does not timely file such an agreement for a taxable period shall not be precluded from timely filing such an agreement for subsequent taxable periods. The agreement will be considered to be timely filed for a taxable period and for all subsequent taxable periods if it is filed at or before the time the annual return for such taxable period is required to be filed pursuant to paragraph (a) of this subsection (5).

(h) The payment referred to in paragraph (e) of this subsection (5) shall be in an amount equal to the highest marginal tax rate in effect under section 39-22-104 (1) multiplied by the nonresident partner's share of the income attributable to the state as reflected on the partnership's return for the taxable period. A partnership shall be entitled to recover a payment pursuant to this paragraph (h) from the nonresident partner on whose behalf the payment was made. Any such payment for a taxable period must be made at or before the time the annual return for such taxable period is required to be filed pursuant to paragraph (a) of this subsection (5).

(i) Any amount paid by the partnership to this state pursuant to paragraph (d) or (h) of this subsection (5) shall be considered to be a payment by the nonresident partner on account of the income tax imposed on the nonresident partner for the taxable period pursuant to section 39-22-104 or 39-22-301.

(6) (a) Any final determination of federal taxable income made pursuant to the provisions of federal law under which federal taxable income is found to differ from the taxable income originally reported to the federal government shall be reported by the taxpayer to the executive director by making and filing a Colorado amended return within thirty days of such final determination with a statement of the reasons for the difference, in such detail as the executive director may require. In addition thereto, any taxpayer filing an amended return with the federal internal revenue service that reflects any change in income reportable to the state of Colorado shall, within thirty days of such federal filing, make and file a corresponding Colorado amended return.

(b) For purposes of this subsection (6), final determination means only the first of the following to occur:

(I) The taxpayer's execution of a waiver with and acceptance by the internal revenue service of restrictions on assessment and collection of deficiency in federal tax or acceptance of overassessment in said tax;

(II) The acceptance by the internal revenue service of an offer of waiver of restrictions on assessment and collection of deficiency in tax or acceptance of overassessment;

(III) The execution by the taxpayer of acceptance of an examining officer's findings by a partnership, limited liability company, or fiduciary;

(IV) The payment of any additional tax by the taxpayer; or

(V) Any judgment becoming final, whether by stipulation or otherwise, in any judicial proceeding affecting such change in reported federal taxable income.

(c) If, from such return or from investigation, it appears that the tax with respect to income imposed by this article has not been fully assessed, the executive director shall, within one year after the receipt of such return or within one year of discovery of such final determination, if unreported, assess the deficiency with interest at the rate prescribed in section 39-22-621.

(d) If the taxpayer does not file such amended return within the prescribed thirty-day period, then the statute of limitations shall be tolled from the end of such thirty-day period until the date that such amended return is filed with the executive director or until the executive director discovers such determination or change, whichever shall first occur.

(e) If any taxpayer agrees with the internal revenue service for an extension, or renewals thereof, of the period for assessing deficiencies or paying refunds in federal income tax or for changing reported federal taxable income of a partnership, limited liability company, or fiduciary for any year or if any taxpayer files a federal income tax refund claim

or initiates administrative or judicial proceedings which have the effect of extending said period for any year, the period within which the executive director may issue a notice of deficiency for any such year shall be four years after the applicable Colorado return was filed or one year after the date of expiration of the extended period for assessing deficiencies in federal income tax or changing reported federal taxable income of a partnership, limited liability company, or fiduciary, whichever is later.

(f) Repealed.

(g) Notwithstanding any provision of this article or of article 21 of this title, any assessment made by reason of the applicability of the provisions of paragraphs (a) to (f) of this subsection (6), which could not have been made except for the extension or tolling, pursuant to said provisions, of the period of limitations otherwise applicable for assessing income taxes, shall be limited to deficiencies arising as a result of adjustments made by the commissioner of internal revenue in any final determination of federal taxable income, if the taxpayer has been audited by the department of revenue for the year in question and the issues raised in the audit have been settled by agreement for payment or payment of deficiencies arising therefrom.

(7) Every person or organization exempt from taxes pursuant to section 39-22-112 shall make and file a return only if said person or organization is required to file a federal return of unrelated business income, which Colorado return shall contain such information as the executive director may prescribe. All procedures of law relating to the determination, assessment, collection, and refund of tax shall apply to such return and the tax payable thereon.

(8) Repealed.

(9) (a) Any person who is required by section 6053 or 6041A of the internal revenue code to file annual information reports concerning tips or remunerations for services or remunerations for direct sales may be required, by rules promulgated by the executive director, to file copies of such reports or otherwise furnish the same to the executive director within the time required by the internal revenue service for the filing of such reports. Such reports shall show, in addition to the information required by the internal revenue service, any amounts deducted and withheld by the payor for income tax due to the state of Colorado from the payee listed on such reports.

(a.5) The executive director may require any magnetic media taxpayer to file the reports described in paragraph (a) of this subsection (9) by magnetic media or in other machine-readable form. For the purposes of this paragraph (a.5), "magnetic media taxpayer" means a taxpayer who is required to file information returns described in section 6041A, 6051, or 6053 of the internal revenue code by magnetic media or in other machine-readable form under section 6011 (e) of the internal revenue code.

(b) Any person required by paragraph (a) of this subsection (9) to file a report who fails to timely file such report shall be subject to a fine of fifty dollars for each such failure.

(10) For income tax years commencing on or after January 1, 1999, the executive director shall include on every income tax return form a statement explaining that prior to January 1, 1999, the income tax rate for an individual, estate, and trust was five percent of federal taxable income and the income tax rate for corporations was five percent of net income. The statement shall also explain that the income tax rate was reduced for income tax years commencing on or after January 1, 1999, but prior to January 1, 2000, to four and three-quarters percent and that the income tax rate was reduced for income tax years commencing on or after January 1, 2000, to four and sixty-three one hundredths percent.

Source: L. 64: R&RE, p. 780, § 1. C.R.S. 1963: § 138-1-65. L. 70: p. 394, §§ 2, 3. L. 72: p. 570, § 57. L. 73: p. 1447, § 1. L. 77: (6)(g) added, p. 1799, § 1, effective July 1. L. 78: (1)(a) and (3)(b) amended, p. 485, § 9, effective May 5. L. 79: (1)(a) amended, p. 1426, § 3, effective July 3. L. 83: (9) added, p. 1526, § 1, effective July 1. L. 87: (1)(a), (3)(b), (4), (7), and (9)(a) amended and (1)(c), (3)(c), and (8) repealed, pp. 1450, 1457, §§ 24, 31, effective June 22. L. 88: (1)(a) amended, p. 1315, § 11, effective May 29. L. 89: (1)(a), (2), IP(3), and (5) amended, p. 1500, § 5, effective July 1, 1990. L. 90: (4.5) added and (6)(b)(III) and (6)(e) amended, p. 455, § 36, effective April 18. L. 91: (1)(a) and (3)(b) amended, p. 1987, § 3, effective April 20. L. 92: (2) amended and (2.5) added, p.

2263, § 2, effective April 16. **L. 95:** (1)(a) amended, p. 304, § 1, effective April 21; (4.5) repealed, p. 818, § 46, effective May 24. **L. 96:** (5) amended, p. 335, § 2, effective April 16. **L. 99:** (9)(a) amended and (9)(a.5) added, p. 276, § 2, effective August 4; (10) added, p. 1377, § 3, effective August 4. **L. 2000:** (10) amended, p. 1414, § 4, effective August 2. **L. 2001:** (6)(a), (6)(c), and (6)(d) amended, p. 96, § 1, effective August 8; (6)(f) repealed, p. 234, § 3, effective August 8. **L. 2005:** (5)(e.5) added, p. 213, § 1, effective August 8.

Cross references: For the legislative declaration contained in the 2001 act repealing subsection (6)(f), see section 1 of chapter 95, Session Laws of Colorado 2001.

ANNOTATION

Return not containing income information not statutory "return". A taxpayer's return which does not contain any information relating to the taxpayer's income from which the tax can be computed is not a return within the meaning of subsection (1). *People v. Vickers*, 199 Colo. 305, 608 P.2d 808 (1980).

Subsection (6)(c) is not an exception to the general statute of limitations, § 39-21-107

(2), as subsection (6)(c) merely allows the director to assess a deficiency only to the extent of the information contained in the federal revenue agent's report filed by the taxpayer. *Kraftco Corp. v. Charnes*, 636 P.2d 1300 (Colo. App. 1981).

Applied in *People v. Vesely*, 41 Colo. App. 325, 587 P.2d 802 (1978).

39-22-602. Failure to make return - director may make. (1) If any person fails or refuses to make any return required by this article, the executive director may make such return for such person from such information as may be available, and any assessment based on such return made by the executive director shall be as good and sufficient as if such return had been made and filed by the person liable therefor.

(2) If the executive director finds that any nonresident whose name and address were furnished by a county assessor pursuant to section 39-5-102 (3) has not made a return as required by this article, the executive director shall mail notice by first-class mail as set forth in section 39-21-105.5 to the nonresident setting a time within which the return shall be made and may thereafter proceed pursuant to subsection (1) of this section, as necessary.

Source: **L. 64:** R&RE, p. 783, § 1. **C.R.S. 1963:** § 138-1-66. **L. 69:** p. 1132, § 2. **L. 96:** (2) amended, p. 165, § 6, effective July 1.

ANNOTATION

Applied in *Callow v. Dept. of Rev.*, 197 Colo. 513, 594 P.2d 1051 (1979).

39-22-603. Returns not made under oath. Wherever in this article it is required that a return be made under oath, the signing of the return by the person therein required to make oath shall be sufficient compliance with the provisions of said sections if such return contains or is verified by a written declaration that it is made under the penalties of perjury in the second degree. Any individual who willfully makes and signs a return which he does not believe to be true and correct as to every material matter is guilty of perjury in the second degree.

Source: **L. 64:** R&RE, p. 784, § 1. **C.R.S. 1963:** § 138-1-67. **L. 72:** p. 571, § 58.

Cross references: For perjury in the second degree and the penalty therefor, see §§ 18-8-503 and 18-1.3-501.

39-22-603.5. Frivolous returns. (1) As used in this part 6, unless the context otherwise requires, "frivolous return" means a return filed by any person that purports to be a return of the tax imposed by this article but that:

- (a) Does not contain information on which the substantial correctness of the return may be judged; or
- (b) Contains information that on its face indicates that the return is substantially incorrect; and
- (c) The conduct described in either paragraph (a) or (b) of this subsection (1) is due to either:
 - (I) A position that is frivolous; or
 - (II) A desire, which appears on the purported return, to delay or impede the administration of state income tax laws.
- (2) (a) If any person files a frivolous return, the executive director may calculate the person's Colorado taxable income and make an assessment based on such information as is available at the time the return is filed.
- (b) If the tax calculated by the executive director is greater than the amount theretofore assessed or paid, a notice of deficiency shall be mailed to the taxpayer by first-class mail as set forth in section 39-21-105.5.

Source: L. 2002: Entire section added, p. 530, § 2, effective August 7.

39-22-604. Withholding tax - requirement to withhold - tax lien - exemption from lien - definitions. (1) All of the other provisions of this article shall apply to and be effective as to the provisions of this section to the extent to which they are not inconsistent with this section, and all of the remedies available to the department of revenue for the administration, assessment, enforcement, and collection of tax under other sections of this article and article 21 of this title shall be available to the department and shall apply to the amounts required to be deducted and withheld under the provisions of this section, and all of the penalties, both civil and criminal, shall apply to this section.

(2) Definitions: As used in this section, unless the context otherwise requires:

(a) "Employee" means and includes every individual who is a resident or domiciled in the state of Colorado performing services for an employer, either within or without or both within and without the state of Colorado, or any individual performing services within the state of Colorado, the performance of which services constitutes, establishes, and determines the relationship between the parties as that of employer and employee, and includes officers of corporations and individuals, including elected officials, performing services for the United States government or any agency or instrumentality thereof or the state of Colorado or any county, city or municipality, or political subdivision thereof; except that the term shall not include an individual who is not a resident or domiciled in the state of Colorado and who performs services in connection with any phase of motion picture or television production or television commercials for less than one hundred twenty days during any calendar year.

(b) "Employer" means a person transacting business in or deriving any income from sources within the state of Colorado for whom an individual performs or performed any services, of whatever nature, who has control of the payment of wages for such services or is the officer, agent, or employee of the person having control of the payment of wages.

(b.5) "Magnetic media taxpayer" means a taxpayer who is required to file information returns described in section 6041A, 6051, or 6053 of the internal revenue code by magnetic media or in other machine-readable form under section 6011 (e) of the internal revenue code.

(c) "Wages" shall have the same meaning as is given in section 3401 (a) of the internal revenue code.

(3) (a) Every employer making payment of wages shall deduct and withhold from wages an amount measured by a percentage or percentages of the total amount required to be deducted and withheld by an employer from wages of an employee for federal income tax purposes, or measured by withholding tax tables promulgated by the executive director, or by such other methods as the executive director may prescribe if such percentage, percentages, tables, or other methods result in the withholding from the employee's wages during each pay period an amount which shall approximate as nearly as possible the income tax due to the state of Colorado by such employee.

(b) The executive director may, upon written application having been made to him, approve a method of withholding in lieu of the method provided in paragraph (a) of this subsection (3) to authorize a withholding based upon a percentage fixed by the executive director of the adjusted gross income, which percentage shall approximate as nearly as possible the amount of income tax due to the state of Colorado and as nearly as possible the amount so deducted and withheld in paragraph (a) of this subsection (3).

(c) Every employer, irrespective of whether or not said employer deducts and withholds the amounts as provided in this section, shall be liable for the amounts required to be deducted and withheld unless, in the case of any failure to deduct and withhold such amounts, it is shown that such failure was due to reasonable cause and not due to willful neglect. If the employer, in violation of the provisions of this section, fails to deduct and withhold the amounts as provided in this section and thereafter the tax against which such deducted and withheld amounts would have been credited is paid, the amounts so required by this section to be deducted and withheld shall not be collected from the employer; but in no such case, unless due to reasonable cause, shall the employer be relieved from liability for any penalties or additions to the amounts required under this section to be deducted and withheld otherwise applicable to any such failure to deduct and withhold.

(4) (a) The executive director may require any taxpayer who has an annual estimated withheld tax liability of more than fifty thousand dollars to remit withheld tax by electronic funds transfer. The executive director shall promulgate rules and regulations prescribing withholding tax periods and the corresponding tax return filing and tax payment due dates. The executive director shall consult with the state treasurer regarding the formulation of such rules and regulations in order to minimize the amount of lost interest to the state general fund.

(b) The rules and regulations promulgated pursuant to this section shall not prescribe filing or withholding requirements which are more frequent or more stringent than corresponding federal requirements.

(5) All amounts deducted and withheld shall be considered as tax collected under the provisions of this section and no employee shall have any right of action against his employer in respect to any moneys so deducted and withheld from his wages and paid over to the department in compliance or in intended compliance with this section.

(6) (a) Every employer shall, in accordance with such rules as shall be prescribed by the department of revenue, provide each employee with a statement of the amounts of moneys deducted and withheld from such employee's wages in accordance with the provisions of this section. Every employer shall also make an annual statement for each employee to the department of revenue, on such forms as are provided or approved by the department, a copy of which shall be provided each employee, summarizing the total compensation paid and the tax withheld for such employee during the preceding calendar year or any portion thereof, and the said annual statement shall be filed on or before the date established pursuant to section 6071 of the internal revenue code for filing similar federal statements. Failure to file the statements within the time prescribed therefor, unless shown to have been due to reasonable cause, or the willful filing or furnishing of false or fraudulent statements shall subject the employer to a penalty, at the discretion of the executive director, of not less than five dollars nor more than fifty dollars, which shall be in addition to any criminal penalty otherwise provided for failure to file a return or for filing a false or fraudulent return.

(b) The executive director may require any magnetic media taxpayer to file the annual statements described in paragraph (a) of this subsection (6) by magnetic media or in other machine-readable form.

(7) (a) Every employer who deducts and withholds any amounts under the provisions of this section shall hold the same in trust for the state of Colorado for the payment thereof to the department in the manner and at the time provided for in this section, and the state of Colorado and the department shall have a lien to secure the payment of any amounts withheld and not remitted as provided in this section upon all of the assets of the employer and all property, including stock in trade, business fixtures, and equipment, owned or used by the employer in the conduct of his business, so long as any delinquency continues, which lien shall be prior to any lien of any kind whatsoever, including existing liens for taxes.

(b) The owner, conditional vendor, or mortgagee of any property, real or personal, or any stock in trade, business fixtures, or equipment owned or used by an employer subject to the lien provided by this subsection (7), may exempt such property from the lien granted in this section to the state of Colorado and the department by requiring the employer to procure a certificate from the department certifying that such employer has posted with the department security for the payment of the amounts withheld under the provisions of this section. When such certificate is procured by the employer and transmitted to the owner, conditional vendor, or mortgagee of any of the assets of the employer, such assets shall thereafter be exempt from attachment under the lien granted to the state of Colorado and the department by this subsection (7).

(c) Any employer shall provide a copy of any lease with an owner to the department of revenue within ten days of seizure of the property and assets described in paragraph (a) of this subsection (7). The department shall verify that such lease is bona fide and notify the owner that such lease has been received by the department. The department shall use its best efforts to notify the owner of the real or personal property which might be subject to the lien created in paragraph (a) of this subsection (7). The real or personal property of an owner who has made a bona fide lease to an employer shall be exempt from the lien created in paragraph (a) of this subsection (7) if such property can reasonably be identified from the lease description or if the lessee is given an option to purchase in such lease and has not exercised such option to become the owner of the property leased. This exemption shall be effective from the date of the execution of the lease. Such exemption shall also apply if the lease is recorded with the county clerk and recorder of the county where the property is located or based or a memorandum of the lease is filed with the department of revenue on such forms as may be prescribed by said department after the execution of the lease at a cost for such filing of two dollars and fifty cents per document. Motor vehicles which are properly registered in this state, showing the lessor as owner thereof, shall be exempt from the lien created in paragraph (a) of this subsection (7); except that said lien shall apply to the extent that the lessee has an earned reserve, allowance for depreciation not to exceed fair market value, or similar interest which is or may be credited to the lessee. Where the lessor and lessee are blood relatives or relatives by law or have twenty-five percent or more common ownership, a lease between such lessee and such lessor shall not be considered as bona fide for purposes of this section.

(c.5) Any coin-operated vending machine or video or other game machine shall be exempt from the lien created in paragraph (a) of this subsection (7) if:

(I) The machine is placed on the premises of an employer under the terms of a lease or other agreement under which the employer is given no right to become the owner of the machine;

(II) The machine is plainly marked in a location accessible to agents of the department of revenue with information sufficient to permit identification of the owner of said machine; and

(III) The owner of the machine has filed with the executive director a schedule listing the machine by serial number and including thereon the owner's full name and the address of his business and such other information as the executive director may require. To protect the anonymity of owners of property, the executive director may permit property covered by this paragraph (c.5) to be marked using numbers or other coded identification.

(d) Any employer who is in possession of property under the terms of a lease, which property is exempt from lien as provided in paragraph (c) of this subsection (7), may be required by the executive director to remit tax funds collected at more frequent intervals than would otherwise be required, but no more frequently than the employer's payroll period, or may be required to furnish security for the proper payment of taxes whenever the collection of taxes appears to be in jeopardy.

(8) The entire amount of income from wages upon which tax was deducted and withheld shall be included in the gross income of the income tax return required to be made by the employee, the recipient of the wages, without exclusion of such amounts deducted and withheld under this section, and any tax so deducted and withheld shall be credited against the total income tax, as computed in the employee's return, made in accordance with the provisions of this section.

(9) Repealed.

(10) In the event the excess tax deducted and withheld is one dollar or less, no refund shall be made, unless a specific claim for refund is filed by the taxpayer at the time the return is filed. The excess, subject to being refunded, shall in no event and under no condition be allowed as a credit against any tax accruing on a return filed for a year subsequent to the year during which the wages were received, and can only be credited against a tax accruing upon a return of wages from which such excess was deducted and withheld.

(11) Separate refunds may be made by the department to a husband or wife who have filed a joint return, at the written request of either, the amount payable to each spouse being proportioned upon the gross earnings of each as shall be established to the satisfaction of the department. If an employee entitled to a refund dies, payment of such refund shall be made in such manner as provided for by law for distribution of moneys payable by the state of Colorado to a decedent.

(12) (a) (I) Moneys remitted by employers under this section shall be deposited with the state treasurer and by him or her credited to a fund hereby established, denominated the "income tax withholding fund". Refunds as provided for by this section shall be made from this fund in the same manner as refunds are made under section 39-21-108. Except for moneys to be transferred to the state treasurer pursuant to section 39-21-108 (5), all unexpended balances on hand in said fund on June 30, 1971, and each June 30 thereafter, or at any time as shall be determined by the controller, with the approval of the state treasurer, shall be credited to the general fund of the state. The unexpended balance shall include all moneys that for any reason cannot be refunded. All warrants that cannot be delivered to the taxpayer and that are not presented for payment within six months from the date of issuance thereof shall be void, and the moneys represented thereby shall be included in the unexpended balance in said fund at the expiration of said year. Except as provided in subparagraph (II) of this paragraph (a), persons entitled to the refund of moneys represented by warrants that cannot be delivered to the taxpayer and that are not presented for payment within six months from the date of issuance thereof may file claims for refund at any time within four years from the date the income tax return that establishes the right to the refund was required to be filed. Claims for refund not filed within the prescribed four-year period shall not be allowed or paid by the department of revenue.

(II) On and after October 1, 2002, if the department of revenue has cancelled a warrant pursuant to section 39-21-108 that has not been presented and has forwarded to the state treasurer information and an amount of money equal to the amount of the warrant as required by section 39-21-108 (5), the taxpayer must file the claim for the amount of the refund with the state treasurer pursuant to the "Unclaimed Property Act", article 13 of title 38, C.R.S. The department and the state treasurer shall cooperate to ensure that any taxpayer who contacts the department of revenue to claim the amount of a refund represented by a cancelled warrant is provided with the information or assistance necessary to obtain the refund from the state treasurer.

(b) All of the additional interest derived from moneys deposited in the income tax withholding fund created in paragraph (a) of this subsection (12) as a result of the enactment of House Bill 91S2-1027 at the second extraordinary session of the fifty-eighth general assembly shall be credited to the general fund.

(13) The department is empowered to make rules and regulations for the enforcement of the provisions of this section, including rules and regulations for determining the amount, up to but not exceeding the amount limited in this section, to be deducted and withheld by employers from wages of nonresident employees, only a part of whose wages are paid for services performed within the state of Colorado.

(14) Nothing in this section shall be construed to prevent any employee, with consent of his employer, from voluntarily subjecting himself to the provisions of this section, and in all such cases, same will be handled by the department of revenue in the same manner as those subjected by the provisions of this section.

(15) Repealed.

(16) (a) On or before the date of the commencement of employment with an employer, the employee shall furnish the employer with a signed withholding certificate. A comparable

withholding certificate filed pursuant to the internal revenue code shall be deemed to satisfy the filing requirement under this subsection (16). Where necessary to cause the proper amount to be withheld, the executive director may adjust the employee's withholding to the amount properly allowable under the internal revenue code.

(b) (I) To enforce the provisions of this section, the executive director may file with the employer a withholding certificate on behalf of the employee. Prior to the filing of such certificate, the executive director shall first notify the employee that the certificate previously filed by the employee is being examined and that the employee may submit satisfactory evidence pursuant to the internal revenue code within ten days of receipt of said notice as to the correct number of withholding exemptions and allowances. Should the executive director, after reviewing any evidence so submitted, find the certificate filed by the employee to be defective, the employer shall accept the certificate filed by the director in lieu of any certificate previously filed by the employee, and such certificate filed by the executive director shall thereafter form the basis for withholding wages as required by this section. The executive director may also require from the employer a copy of any withholding certificate signed by the employee.

(II) Any employer who fails to provide a copy of any withholding certificate signed by the employee required by the executive director shall be subject to a civil penalty of not more than five hundred dollars. Such civil penalty may be assessed and collected by the executive director.

(c) Any employee may request a hearing to protest such certificate filed on his behalf by the executive director. Such hearing shall be conducted pursuant to section 39-21-103, and any final determination shall be appealable in the district court in accordance with section 39-21-105.

(17) Any person making any payment of winnings which are subject to withholding for federal income tax purposes shall deduct and withhold from such payment for Colorado income tax purposes a percentage of such winnings established by rule and regulation of the department of revenue. The amount withheld shall be remitted to the department of revenue in the manner required pursuant to rules and regulations authorized in subsection (4) of this section.

(18) (a) Any person who makes a payment for services to any natural person that is not otherwise subject to state income tax withholding but that requires an information return, including but not limited to any payment for which internal revenue service form 1099-B, 1099-DIV, 1099-INT, 1099-MISC, 1099-OID, or 1099-PATR, the issuance of any of which allows taxpayer identification number verification through the taxpayer identification number matching program administered by the internal revenue service, or any other version of form 1099 is required, shall deduct and withhold state income tax at the rate of four and sixty-three one-hundredths percent if the person who performed the services:

(I) Fails to provide a validated taxpayer identification number; or

(II) Provides an internal revenue service-issued taxpayer identification number issued for nonresident aliens.

(b) Any person other than a natural person and any natural person who in the course of conducting a trade or business as a sole proprietor makes any payment for services to a natural person that is not reported on any information return shall deduct and withhold state income tax at the rate of four and sixty-three one-hundredths percent, unless the employer making payment has a validated taxpayer identification number from the person to whom payment is made.

(c) The requirement to withhold and deduct pursuant to paragraph (a) of this subsection (18) shall not apply to an individual who is exempt from federal withholding pursuant to a properly filed internal revenue service form 8233 if a copy of such form has been filed with the department of revenue.

(d) For purposes of all other provisions of this section, excluding paragraph (a) of subsection (3) of this section, a person who deducts and withholds state income tax from a person who performs services pursuant to the provisions of this subsection (18) shall be treated as an employer withholding and deducting wages from an employee, and such other provisions of this section shall apply accordingly. This paragraph (d) shall not be construed

as making the person who performed the services an employee of the person who deducts and withholds state income tax for any other purpose in law.

(e) The executive director may promulgate rules to authorize any amounts deducted and withheld pursuant to this subsection (18) to be paid to the department of revenue as part of the state income tax return.

(f) For purposes of this subsection (18), “validated taxpayer identification number” means a social security number or an internal revenue service individual taxpayer identification number that has been confirmed by the person or employer making a payment to a person through the portal described in section 24-37.5-107, C.R.S., or through any other equally effective form of third-party verification approved by the department of revenue as having been assigned by the social security administration or the internal revenue service to the person to whom payment is made and, in the case of an individual taxpayer identification number, as not having been assigned as a taxpayer identification number issued for nonresident aliens.

(g) This subsection (18) shall be enforced without regard to race, religion, gender, ethnicity, or national origin.

Source: L. 64: R&RE, p. 784, § 1. C.R.S. 1963: § 138-1-68. L. 69: pp. 1134, 1136, §§ 1, 1. L. 71: pp. 1253, 1255, §§ 1, 1. L. 73: p. 1448, § 1. L. 75: (4) R&RE, p. 1494, § 1, effective July 14. L. 76: (15) added, p. 783, § 1, effective May 27. L. 77: (7)(c) amended, p. 1802, § 1, effective June 19; (2)(a), (4)(a), (4)(b), and (4)(d) amended, pp. 1405, 1800, §§ 4, 1, effective July 1. L. 78: (15) repealed, p. 275, § 103, effective May 23. L. 81: (9) amended, p. 1864, § 5, effective June 8; (16) added, p. 1879, § 2, effective July 1. L. 82: (4)(a), (4)(b), and (4)(d) amended and (4)(c) repealed, pp. 566, 567, §§ 1, 2, effective January 1, 1983. L. 83: (17) added, p. 1526, § 2, effective July 1. L. 84: (17) amended, p. 1123, § 36, effective June 7. L. 88: (16)(a), (16)(b), and (17) amended, p. 1315, § 12, effective May 29. L. 89: (7)(c.5) added, p. 1509, § 1, effective April 6; (6) amended, p. 1501, § 6, effective July 1, 1990. L. 91, 2nd Ex. Sess.: (4) R&RE and (12) amended, p. 97, §§ 2, 3, effective January 1, 1992. L. 92: (7)(c) amended, p. 2200, § 3, effective April 16; (4)(a) and (6) amended, p. 2217, § 1, effective May 27. L. 93: (17) amended, p. 871, § 2, effective May 6; (2)(c), (4), and (7)(d) amended, p. 870, § 1, effective January 1, 1994. L. 98: (2)(b.5) added and (6) amended, p. 320, §§ 1, 2, effective April 17. L. 99: (2)(b.5) amended, p. 277, § 3, effective August 4. L. 2001: (10) amended, p. 234, § 4, effective August 8; (12)(a) amended, p. 619, § 6, effective August 8. L. 2002: (16)(b) amended, p. 531, § 3, effective August 7. L. 2006, 1st Ex. Sess.: (18) added, p. 34, § 2, effective January 1, 2008 (see editor’s note). L. 2009: (9) repealed, (HB 09-1219), ch. 71, p. 241, § 2, effective March 25.

Editor’s note: Section 4 of House Bill 06S-1015 provides that the act enacting subsection (18) applies to services performed and obligations accrued on or after January 1, 2008, unless the portal described in § 24-37.5-107, Colorado Revised Statutes, is not accessible to a person seeking to verify whether a taxpayer identification number is valid on or before said date, in which case said subsection shall take effect on the January 1 that immediately follows the date on which the portal becomes accessible and shall apply to services performed and payment obligations accrued on or after said January 1.

Cross references: (1) For the legislative declaration contained in the 1991 act amending subsections (4) and (12) in 1991, see section 1 of chapter 20 of the supplement to the Session Laws of Colorado 1991, Second Extraordinary Session.

(2) For the legislative declaration contained in the 2001 act amending subsection (10), see section 1 of chapter 95, Session Laws of Colorado 2001.

ANNOTATION

Law reviews. For article, “An Introduction to Tax Liens”, see 13 Colo. Law. 399 (1984). For article, “2006 Immigration Legislation in Colorado”, see 35 Colo. Law. 79 (October 2006).

This section, as used to seize property of lessor due to lessee’s violation, does not violate due process nor does it effect a taking. This section represents a valid exercise of the

sovereign power to assess and collect taxes, which is distinguishable from the taking of private property for a public purpose. *Burtkin Associates v. Tipton*, 845 P.2d 525 (Colo. 1993).

This section does not violate the equal protection and due process rights of a consignor when a rational basis exists for exempting leased property from the tax lien while enforcing the tax lien against consigned property. *Van Dorn Retail Mgt., Inc. v. City & County of Denver*, 902 P.2d 383 (Colo. App. 1994).

State's lien has priority over security interest. The state's lien on property for delinquent

withholding taxes is entitled to priority over the security interest in property held by the seller who had repossessed and sold it. *ITT Diversified Credit Corp. v. Couch*, 669 P.2d 1355 (Colo. 1983); *Wimmer v. Jenkins*, 703 P.2d 1326 (Colo. App. 1985).

Under this section, liens for withholding taxes are entitled to priority over all other liens, including liens of the FDIC. *Pima Financial Serv. v. Intermountain Home Sys.*, 786 F. Supp. 1551 (D. Colo. 1992).

39-22-604.3. Innovation reinvestment - withholding - transfers - bioscience - clean technology - short title - legislative declaration - definitions - repeal. (1) This section shall be known and may be cited as the "Colorado Bioscience and Clean Technology Innovation Reinvestment Act".

(2) (a) The general assembly hereby finds, determines, and declares that:

(I) Recent legislative initiatives to expand the bioscience and clean technology segments of the Colorado economy have been both economically successful and supportive of Colorado's higher education research institutions;

(II) Such initiatives have demonstrated the potential for establishing Colorado as a national leader in bioscience and clean technology;

(III) Colorado efforts have been recognized as best practices for economic development of these industry sectors;

(IV) Those efforts have also demonstrated the potential to expand the role of Colorado's higher education research institutions in these areas; and

(V) The partnerships created between higher education research institutions and industry through these initiatives provide a model for economic development.

(b) The general assembly therefore declares that it is in the best interest of the state to build on past successes and provide a long-term funding stream that enables the growth of the bioscience and clean technology industries in the state and to support Colorado's higher education research institutions.

(3) As used in this section, unless the context otherwise requires:

(a) "Bioscience and clean technology income tax withholding growth" means an amount equal to the withholding base subtracted from the prior year's withholding total.

(b) "Bioscience or clean technology industry code" means any of the following codes within the North American industry classification system established by the federal office of management and budget: 311221, 311222, 311223, 325193, 325199, 325221, 325311, 325312, 325314, 325320, 325411, 325412, 325413, 325414, 334510, 334516, 334517, 339111, 339112, 339113, 339114, 339115, 339116, 541380, 541710, 621511, 621512, 221111, 221119, 221330, 237110, 237130, 238220, 325188, 333414, 333611, 334413, 334512, 335312, 335911, 335999, 336111, 423720, 541620, 541690, and 541712.

(c) "Prior year's withholding total" means the total amount deducted and withheld from employees' wages and paid to the department of revenue pursuant to section 39-22-604 by employers with a clean technology industry code for the target year.

(d) "Target year" means 2013 with respect to the moneys required to be credited to the specified cash funds beginning on March 1, 2014, pursuant to subsection (4) of this section and one calendar year later for each successive year in which moneys are credited pursuant to said subsection (4).

(e) "Withholding base" means the annual average of the total amount deducted and withheld from employees' wages and paid to the department of revenue pursuant to section 39-22-604 by employers with a bioscience or clean technology industry code for the three calendar years prior to the target year.

(4) Notwithstanding any provision of law to the contrary, beginning March 1, 2014, and March 1 of the next nine years thereafter, the state treasurer shall credit an amount equal to one-half of the bioscience and clean technology income tax withholding growth from the

moneys remitted by employers to the department of revenue pursuant to section 39-22-604 to the bioscience discovery evaluation cash fund created in section 24-48.5-108 (5), C.R.S., and the clean technology discovery evaluation cash fund created in section 24-48.5-111 (5), C.R.S., with each fund receiving an equal share.

(5) No later than February 1, 2014, and February 1 of the next nine years thereafter, the executive director shall notify the state treasurer of the withholding base and the prior year's withholding total that apply to the moneys required to be credited beginning on March 1 of that year.

(6) This section is repealed, effective July 1, 2024.

Source: L. 2011: Entire section added, (SB 11-047), ch. 213, p. 934, § 1, effective July 1, 2012.

39-22-604.5. Withholding tax - transfers of Colorado real property - nonresident transferors. (1) Except as otherwise provided in this section, in the case of any conveyance of a Colorado real property interest, the title insurance company or its authorized agent or any attorney, bank, savings and loan association, savings bank, corporation, partnership, association, joint stock company, trust, or unincorporated organization or any combination thereof, acting separately or in concert, that provides closing and settlement services as defined herein shall be required to withhold an amount equal to two percent of the sales price of the Colorado real property interest conveyed or the net proceeds resulting from such conveyance, whichever is less, when:

(a) The transferor is a person and either the return required to be filed with the secretary of the treasury pursuant to section 6045 (e) of the internal revenue code indicates or the authorization for the disbursement of the funds resulting from such transaction instructs that such funds be disbursed to a transferor with a last-known street address outside the boundaries of this state at the time of the transfer of the title to such Colorado real property interest or to the escrow agent of such transferor; or

(b) (I) The transferor is a corporation which immediately after the transfer of the title to the Colorado real estate interest has no permanent place of business in Colorado.

(II) For purposes of this section, a corporation has no permanent place of business in Colorado if all of the following apply:

(A) Such corporation is a foreign corporation;

(B) Such corporation does not qualify pursuant to law to transact business in Colorado; and

(C) Such corporation does not maintain and staff a permanent office in Colorado.

(2) No title insurance company or its authorized agent or any attorney, bank, savings and loan association, savings bank, corporation, partnership, association, joint stock company, trust, or unincorporated organization or any combination thereof, acting separately or in concert, that provides closing and settlement services as defined herein shall be required to withhold any amount pursuant to this section:

(a) If the sales price of the Colorado real property conveyed does not exceed one hundred thousand dollars;

(b) When the transferee is a bank or corporate beneficiary under a mortgage or beneficiary under a deed of trust and the Colorado real property interest is acquired in judicial or nonjudicial foreclosure or by deed in lieu of foreclosure;

(c) If the title insurance company or its authorized agent or any attorney, bank, savings and loan association, savings bank, corporation, partnership, association, joint stock company, trust, or unincorporated organization or any combination thereof, acting separately or in concert, that provides closing and settlement services as defined herein in good faith relies upon a written affirmation executed by the transferor, certifying under penalty of perjury one of the following:

(I) That the transferor, if a person, is a resident of Colorado;

(II) That the transferor, if a corporation, has a permanent place of business in Colorado;

(III) That the Colorado real property being conveyed is the principal residence of the transferor within the meaning of section 1034 of the internal revenue code; or

(IV) That the transferor will not owe tax reasonably estimated to be due pursuant to this article from the inclusion of the actual gain required to be recognized on the transaction in the gross income of the transferor.

(3) Any title insurance company or its authorized agent which is required to withhold any amount pursuant to this section and fails to do so shall be liable for the greater of the following amounts for such failure to withhold:

(a) Five hundred dollars;

(b) Ten percent of the amount required to be withheld pursuant to this section, not to exceed two thousand five hundred dollars.

(4) (a) Amounts withheld and payments made in accordance with this section shall be reported and remitted to the department of revenue in such form and at such time as specified by rule and regulation of the executive director. Written affirmations executed pursuant to paragraph (c) of subsection (2) of this section shall be submitted to the department of revenue pursuant to procedures specified by rule and regulation of the executive director.

(b) All of the other provisions of this article shall apply to and be effective as to the provisions of this section to the extent to which they are not inconsistent with this section, and all of the remedies available to the department of revenue for the administration, assessment, enforcement, and collection of tax under other sections of this article and article 21 of this title shall be available to the department of revenue and shall apply to the amounts required to be deducted and withheld pursuant to the provisions of this section, and all of the penalties, both civil and criminal, shall apply to this section.

(5) Whenever a title insurance company or its authorized agent provides escrow services as directed by the parties in compliance with the withholding requirements of this section, such title insurance company or its authorized agent shall charge the parties pursuant to the rates in effect at the time and filed with the division of insurance of the department of regulatory agencies as required by law.

(6) For purposes of this section, unless the context otherwise requires:

(a) "Authorized agent" means a title insurance agent, as defined in section 10-11-102 (9), C.R.S., who is responsible for closing and settlement services in the transaction.

(b) "Closing and settlement services" means closing and settlement services as defined in section 10-11-102 (3.5), C.R.S., and section 38-35-125, C.R.S.

(c) "Colorado real property interest" means an interest in real property located in Colorado and defined in section 897 (c) (1) (A) (i) of the internal revenue code.

(d) "Escrow agent" means an agent for the purpose of receiving and transferring funds to a principal.

(e) "Person" means any individual, estate, or trust who may be subject to taxation pursuant to part 1 of this article.

(f) "Sales price" means the sum of all of the following:

(I) The cash paid or to be paid, but shall not include stated or unstated interest or original issue discount as determined pursuant to sections 1271 to 1275 of the internal revenue code;

(II) The fair market value of other property transferred or to be transferred;

(III) The outstanding amount of any liability assumed by the transferee to which the Colorado real property interest is subject immediately before and after the transfer.

(g) "Title insurance company" means the title insurance company, as defined in section 10-11-102 (10), C.R.S., responsible for closing and settlement services in the transaction.

Source: L. 92: Entire section added, p. 2274, § 1, effective July 1. L. 96: (6)(e) amended, p. 337, § 3, effective April 16.

Editor's note: Section 1034 of the internal revenue code, referenced in subsection (2)(c)(III), was repealed, effective August 5, 1997, but has been left in for historical purposes.

39-22-605. Failure by individual to pay estimated income tax. (1) Every individual subject to taxation under the provisions of this article shall make and file estimated payments in the amounts and as otherwise specified in this section.

- (2) As used in this section, unless the context otherwise requires:
 - (a) An individual is a “farmer” or “fisherman” for any taxable year if:
 - (I) The individual’s gross income from farming or fishing for the taxable year is at least two-thirds of the total gross income from all sources for the taxable year; or
 - (II) The individual’s gross income from farming or fishing shown on the return of the individual for the preceding taxable year is at least two-thirds of the total gross income from all sources shown on such return.
 - (b) “Return” means a Colorado return required to be made or filed under section 39-22-601.
 - (c) “Tax” or “tax liability” means the tax imposed under this article minus the credits against tax provided by this article other than the credits against tax for withholding pursuant to sections 39-22-604 and 39-22-604.5 and credits against tax for the sales tax refund pursuant to section 39-22-2003.
- (3) Except as otherwise provided in this section, in the case of any underpayment of estimated tax by an individual, there shall be added to the tax under this article for the taxable year an amount determined by applying the rate of interest established under section 39-21-110.5 to the amount of the underpayment for the period of the underpayment. The penalty imposed by this section shall be the only penalty imposed for underpayment of the estimated tax required by this section.
- (4) For purposes of subsection (3) of this section:
 - (a) The amount of the underpayment shall be the excess of the required installment over the amount, if any, of the installment paid on or before the due date for the installment.
 - (b) The period of the underpayment shall run from the due date for the installment to whichever of the following dates is earlier:
 - (I) The fifteenth day of the fourth month following the close of the taxable year; or
 - (II) With respect to any portion of the underpayment, the date on which such portion is paid.
 - (c) For purposes of subparagraph (II) of paragraph (b) of this subsection (4), a payment of estimated tax shall be credited against unpaid required installments in the order in which such installments are required to be paid.
- (5) For purposes of this section:
 - (a) There shall be four required installments for each taxable year.
 - (b) Except as provided in paragraph (c) of this subsection (5), in the case of the following required installments, the due date shall be as follows:

Installment	Due date
1st	April 15
2nd	June 15
3rd	September 15
4th	January 15 of the following taxable year

- (c) If the due date of any installment payment required pursuant to this section falls on a legal federal holiday, then the due date shall be delayed and due on the adjusted federal due date.
- (6) For purposes of this section, the amount of the required installments shall be as follows:
 - (a) The amount of any required installment shall be twenty-five percent of the required annual payment.
 - (b) For purposes of paragraph (a) of this subsection (6), the term “required annual payment” means the lesser of:
 - (I) Seventy percent of the taxpayer’s actual Colorado tax liability shown on the return for the taxable year or, if no return is filed, seventy percent of the tax for such year; or
 - (II) (A) One hundred percent of the taxpayer’s actual Colorado tax liability shown on the return of the individual for the preceding taxable year.

(B) Sub-subparagraph (A) of this subparagraph (II) shall not apply if the preceding taxable year was not a taxable year of twelve months or if the individual did not file a Colorado return for such preceding taxable year.

(c) Limitation on use of preceding year's tax:

(I) If the taxpayer's federal adjusted gross income shown on the return of the individual for the preceding taxable year beginning in any calendar year exceeds one hundred fifty thousand dollars, sub-subparagraph (A) of subparagraph (II) of paragraph (b) of this subsection (6) shall be applied by substituting one hundred ten percent for one hundred percent.

(II) In the case of a married individual who files a separate return for the taxable year for which the amount of the installment is being determined, subparagraph (I) of this paragraph (c) shall be applied by substituting seventy-five thousand dollars for one hundred fifty thousand dollars.

(III) For purposes of returns for the 2001 tax year, the limitation described in this paragraph (c) shall not apply.

(d) When the taxpayer has elected annualized installments for the payment of federal income tax, the amount of the required installment pursuant to this section and the calculation of any addition to tax shall be determined under rules promulgated by the department of revenue.

(7) (a) No addition to tax shall be imposed under subsection (3) of this section for any taxable year if the tax shown on the return for such taxable year or, if no return is filed, the tax, reduced by the credits allowable under sections 39-22-604, 39-22-604.5, and 39-22-2003, is less than one thousand dollars.

(b) No addition to tax shall be imposed under subsection (3) of this section for any taxable year if:

(I) The preceding taxable year was a taxable year of twelve months;

(II) The individual did not have any liability for tax for the preceding taxable year; and

(III) The individual was a resident of Colorado throughout the preceding taxable year.

(c) No addition to tax shall be imposed under subsection (3) of this section with respect to any underpayment to the extent the executive director determines that the underpayment was due to good cause shown by the taxpayer.

(d) No addition to tax shall be imposed under subsection (3) of this section with respect to any underpayment if the executive director determines that:

(I) The taxpayer either retired after having attained age sixty-two or became disabled in the taxable year for which estimated payments were required to be made or in the taxable year preceding such taxable year; and

(II) Such underpayment was due to reasonable cause and not to willful neglect.

(8) (a) For purposes of applying this section, the amount of the credits allowed under sections 39-22-604, 39-22-604.5, and 39-22-2003 for the taxable year shall be deemed a payment of estimated tax and an equal part of such amount shall be deemed paid on each due date for such taxable year, unless the taxpayer establishes the dates on which all amounts were actually withheld, in which case the amounts so withheld shall be deemed payments of estimated tax on the dates on which such amounts were actually withheld.

(b) The taxpayer may apply paragraph (a) of this subsection (8) separately with respect to the following:

(I) Wage withholding; and

(II) All other amounts withheld for which credits are allowed under sections 39-22-604, 39-22-604.5, and 39-22-2003.

(9) If, on or before January 31 of the following taxable year, the taxpayer files a return for the taxable year and pays in full the amount computed on the return as payable, then no addition to tax shall be imposed under subsection (3) of this section with respect to any underpayment of the fourth required installment for the taxable year.

(10) For purposes of this section, if an individual is a farmer or fisherman for any taxable year:

(a) There shall be only one required installment for the taxable year;

(b) The due date for the installment shall be January 15 of the following taxable year;

(c) The amount of the installment shall be equal to the required annual payment determined under paragraph (b) of subsection (6) of this section by substituting fifty percent for seventy percent and without regard to paragraph (c) of said subsection (6); and

(d) Subsection (9) of this section shall be applied by:

(I) Substituting March 1 for January 31; and

(II) Treating the required installment described in paragraph (a) of this subsection (10) as the fourth required installment.

(11) (a) In applying this section to a taxable year beginning on any date other than January 1, there shall be substituted, for the months specified in this section, the months that correspond thereto.

(b) This section shall be applied to taxable years of less than twelve months in accordance with rules prescribed by the department of revenue.

(12) Two taxpayers who file a joint federal declaration of estimated tax shall file a joint Colorado declaration of estimated tax. In such case, if such taxpayers do not file a joint Colorado return for the taxable year, the estimated tax may be treated as the estimated tax of either taxpayer or may be divided between them.

(13) All of the provisions of this section shall also apply to nonresident or part-year resident taxpayers.

(14) All of the provisions of this article and article 21 of this title relating to the powers of the executive director for the administration, assessment, and enforcement of taxes required to be paid under this article shall apply to the provisions of this section.

(15) The department of revenue shall prescribe such rules as may be necessary to carry out the purposes of this section. Such rules shall be promulgated in accordance with article 4 of title 24, C.R.S.

Source: L. 64: R&RE, p. 789, § 1. C.R.S. 1963: § 138-1-69. L. 77: (1) R&RE and (2) and (6) amended, p. 1805, §§ 1, 2, effective January 1, 1978. L. 79: (2) amended, p. 1458, § 1, effective July 1. L. 81: (5) amended, p. 1865, § 6, effective June 8; (1) and (6) amended, p. 1881, § 1, effective January 1, 1982. L. 86: (1), (5), and (6) amended and (4) R&RE, pp. 1125, 1126, §§ 1, 3, 2, effective January 1, 1987. L. 88: (4)(d) added, p. 1319, § 1, effective April 20. L. 89: (2) R&RE, p. 1511, § 1, effective January 1, 1990. L. 2001: Entire section R&RE, p. 877, § 1, effective August 8. L. 2011: (5)(b) amended and (5)(c) added, (HB 11-1260), ch. 59, p. 155, § 1, effective March 25.

Cross references: For withholding tax, see § 39-22-604.

39-22-606. Failure by corporation to pay estimated income tax. (1) Every corporation subject to taxation under the provisions of this article and article 29 of this title shall make and file estimated payments in the amounts as specified in this section.

(2) As used in this section, unless the context otherwise requires:

(a) "Return" means a Colorado return required to be made or filed under section 39-22-601 or 39-29-112.

(b) "Tax" or "tax liability" means:

(I) (A) The tax imposed under this article; minus

(B) The credits against tax provided by this article. For purposes of this section, credits include all credits without regard to whether they are prepayment credits or refunds of excess state revenue; and

(II) (A) The tax imposed under article 29 of this title; minus

(B) The credits against tax provided by article 29 of this title other than the credit against tax for withholding provided pursuant to section 39-29-111. For purposes of this section, credits include all credits without regard to whether they are prepayment credits.

(3) (a) Except as otherwise provided in this section, in the case of any underpayment of estimated tax by a corporation, there shall be added to the tax under this article and article 29 of this title for the taxable year an amount determined by applying the rate of interest established under section 39-21-110.5 to the amount of the underpayment for the period of the underpayment.

(b) For purposes of this subsection (3), the amount of the underpayment shall be the excess of the required installment over the amount, if any, of the installment paid on or before the due date for the installment.

(c) The period of the underpayment shall run from the due date for the installment to whichever of the following dates is earlier:

- (I) The fifteenth day of the fourth month following the close of the taxable year; or
- (II) With respect to any portion of the underpayment, the date on which such portion is paid.

(d) For purposes of subparagraph (II) of paragraph (c) of this subsection (3), a payment of estimated tax shall be credited against unpaid required installments in the order in which such installments are required to be paid.

(4) (a) Except as otherwise set forth in paragraph (b) of this subsection (4), for purposes of this section, there shall be four required installments for each taxable year. The due dates for such installments shall be as follows:

Installment	Due date
1st	April 15
2nd	June 15
3rd	September 15
4th	December 15

(b) (I) If the due date of any installment payment required pursuant to this section falls on a legal federal holiday, then the due date shall be delayed and due on the adjusted federal due date.

(II) On and after July 1, 2007, for purposes of this section, there shall be twelve installments for the tax imposed pursuant to section 39-29-105 for each taxable year. The due date for such installments shall be the fifteenth day of each month, and the installments shall be paid electronically. The department of revenue shall promulgate rules in accordance with article 4 of title 24, C.R.S., governing electronic payment.

(5) (a) For purposes of this section, the amount of the required installments set forth in paragraph (a) of subsection (4) of this section for the tax imposed under this article and for the tax imposed under article 29 of this title shall be twenty-five percent of the required annual payment for each such tax.

(a.5) On and after July 1, 2007, for purposes of this section, the amount of the required installments set forth in paragraph (b) of subsection (4) of this section for the tax imposed pursuant to section 39-29-105 shall be one-twelfth of the required annual payment for the tax.

(b) For purposes of paragraphs (a) and (a.5) of this subsection (5), “required annual payment” means the lesser of:

(I) Seventy percent of the taxpayer’s actual Colorado tax liability shown on the return for the taxable year or, if no return is filed, seventy percent of the tax for such year; or

(II) (A) One hundred percent of the taxpayer’s actual Colorado tax liability shown on the return of the corporation for the preceding taxable year.

(B) Sub-subparagraph (A) of this subparagraph (II) shall not apply if the preceding taxable year was not a taxable year of twelve months or if the taxpayer did not file a Colorado return for such preceding taxable year.

(c) (I) If the taxpayer is a large corporation as defined in section 6655 of the internal revenue code, sub-subparagraph (A) of subparagraph (II) of paragraph (b) of this subsection (5) shall not apply; except that the first required installment set forth in paragraph (a) of subsection (4) of this section for any taxable year may be based on twenty-five percent of the taxpayer’s actual Colorado tax liability shown on the return of the corporation for the preceding year and except that the first required installment set forth in paragraph (b) of subsection (4) of this section for any taxable year may be based on one-twelfth of the taxpayer’s actual Colorado tax liability shown on the return of the corporation for the preceding year. Any reduction in the first installment pursuant to this subparagraph (I) shall be recaptured by increasing the amount of the next required installment.

(II) For purposes of returns and estimated payments for the 2001 tax year, the limitation on the use of the preceding year's tax liability pursuant to subparagraph (I) of this paragraph (c) shall not apply.

(d) When the taxpayer has elected annualized installments or adjusted seasonal installments for the payment of federal income tax, the amount of the required installment pursuant to this section and the calculation of any addition to tax shall be determined under rules promulgated by the department of revenue.

(6) (a) (I) No addition to tax shall be imposed under subsection (3) of this section for any taxable year if the tax imposed under part 3 of this article shown on the return for such taxable year or, if no return is filed, the tax, is less than five thousand dollars.

(II) No addition to tax shall be imposed under subsection (3) of this section for any taxable year if the tax imposed under article 29 of this title shown on the return for such taxable year, or if no return is filed, the tax, reduced by the credit allowable under section 39-29-111, is less than five thousand dollars.

(b) No addition to tax shall be imposed under subsection (3) of this section with respect to any underpayment to the extent the executive director determines that the underpayment was due to good cause shown by the taxpayer.

(7) (a) Except as otherwise provided in paragraph (b) of this subsection (7), for purposes of applying this section, the amount of the credit allowed pursuant to section 39-29-111 for the taxable year shall be deemed a payment of estimated tax and an equal part of such amount shall be deemed paid on each due date for such taxable year.

(b) If the taxpayer establishes the dates on which all amounts were actually withheld, the amounts so withheld shall be deemed payments of estimated tax on the dates on which such amounts were actually withheld.

(8) (a) In applying this section to a taxable year beginning on any date other than January 1, the corresponding months shall be substituted for the months specified in this section.

(b) This section shall be applied to taxable years of less than twelve months in accordance with rules prescribed by the department of revenue.

(9) All of the provisions of this article, article 29 of this title, and article 21 of this title relating to the powers of the executive director for the administration, assessment, and enforcement of taxes required to be paid pursuant to said articles shall apply to the provisions of this section.

(10) The department of revenue shall prescribe such rules as may be necessary to carry out the provisions of this section. Such rules shall be promulgated in accordance with article 4 of title 24, C.R.S.

Source: L. 64: R&RE, p. 791, § 1. C.R.S. 1963: § 138-1-70. L. 77: (1) and (10) amended, p. 1855, § 12, effective January, 1978. L. 81: (5) amended, p. 1865, § 7, effective June 8; (8)(b) and (10) amended, p. 1881, § 2, effective January 1, 1982. L. 2001: Entire section R&RE, p. 881, § 2, effective August 8. L. 2007: (4), (5)(a), IP(5)(b), and (5)(c)(I) amended and (5)(a.5) added, p. 1407, § 2, effective May 30. L. 2011: (4)(b) amended, (HB 11-1260), ch. 59, p. 155, § 2, effective March 25.

39-22-607. Estimated tax deposited with treasurer. All moneys remitted as payments of estimated tax shall be deposited daily with the state treasurer and shall be allocated in accordance with the provisions of section 39-22-623.

Source: L. 64: R&RE, p. 794, § 1. C.R.S. 1963: § 138-1-71.

39-22-608. Form, place, and date of filing return - extension - electronic filing.

(1) All returns required by this article shall be made as nearly as practicable in the same form as the corresponding form of income tax return required by the United States.

(2) All returns shall be filed in the office of the executive director on or before the fifteenth day of the fourth month following the close of the taxable year. The executive

director may grant a reasonable extension of time for filing returns and for paying the tax under such rules and regulations as he shall prescribe.

(3) Residents who are traveling or temporarily residing outside the United States at the time provided in subsection (2) of this section shall be allowed an automatic extension to and including the fifteenth day of the sixth month following the close of the taxable year in which to file returns.

(4) Notwithstanding subsection (2) of this section, if the time for electronic filing of a federal income tax return pursuant to the internal revenue code is changed to a date later than the date specified in subsection (2) of this section, the executive director may adopt a rule changing the time for electronic filing of a return required by this article to the same date.

Source: L. 64: R&RE, p. 794, § 1. C.R.S. 1963: § 138-1-72. L. 71: p. 1256, § 1. L. 89: (2) amended, p. 1502, § 7, effective July 1, 1990. L. 2003: (4) added, p. 752, § 1, effective March 25.

39-22-609. Payment of tax - applicable when. (1) All taxes imposed under the provisions of this article shall be paid on the fifteenth day of the fourth month following the close of the taxable year; but the executive director may grant any taxpayer, upon application therefor, an extension of time for the payment of the tax, or any portion thereof, with interest to be charged on the unpaid balance at a rate imposed under section 39-21-110.5 for the period of such extension. No extension of time shall be authorized for payment of amounts of tax due upon deficiency assessments, or on amended or delinquent returns.

(2) Payment of the estimated income tax or any installment thereof shall be considered payment on account of the income taxes imposed by this article.

Source: L. 64: R&RE, p. 795, § 1. C.R.S. 1963: § 138-1-73. L. 81: (1) amended, p. 1865, § 8, effective June 8.

39-22-610. Relief for members of the armed forces of the United States - when. (1) The period of time commencing with the declaration of war by congress and ending twelve months after the termination of any such declared war during which an individual is a member of the armed forces of the United States, shall be disregarded in determining, under the provisions of this article, any income tax liability, including any interest, penalty, or additional tax, of any such individual, whether any act required of or permitted by such individual or the state of Colorado, in respect to the income tax liability, was performed within the time prescribed therefor; but this section shall not revive any right or liability previously barred by law.

(2) The period of time during which an individual is serving in the armed forces of the United States or in support thereof in an area designated by presidential order as a combat zone, and a period of one hundred eighty days after such service, shall be disregarded in determining under the provisions of this article any income tax liability, including any interest, penalty, or additional tax, of any such individual, whether any act required of or permitted by such individual or the state of Colorado, in respect to such income tax liability, was performed within the time prescribed therefor.

Source: L. 64: R&RE, p. 795, § 1. C.R.S. 1963: § 138-1-74. L. 71: p. 1256, § 2.

ANNOTATION

Law reviews. For article, "An Update of ment Interest in Colorado", see 15 Colo. Law. Appendices from Collecting Pre- and Post-Judg- 990 (1986).

39-22-611. Property exempt from ad valorem taxes. Notwithstanding any other provisions of law, all intangible personal property, whether or not owned by a resident of

Colorado, and whether or not such property or evidence thereof is situated or held or has its legal situs within the state, shall be exempt from ad valorem tax imposed by the state of Colorado, or by any political subdivision thereof; but nothing in this section shall be construed to repeal, or in any way affect, the use or inclusion of intangible property other than licenses granted by the federal communications commission to a wireless carrier, as defined in section 29-11-101, C.R.S., as a factor in arriving at the valuation of public utility property assessed by the property tax administrator under provisions of articles 1 to 13 of this title.

Source: L. 64: R&RE, p. 795, § 1. C.R.S. 1963: § 138-1-75. L. 98: Entire section amended, p. 1267, § 2, effective June 1. L. 2004: Entire section amended, p. 1209, § 92, effective August 4. L. 2008: Entire section amended, p. 685, § 6, effective August 5.

ANNOTATION

Colorado's intangible property tax exemption singled out railroad as part of an isolated and targeted group for discriminatory tax treatment in violation of §306(1)(d) of the federal Railroad Revitalization and Regulatory Re-

form Act of 1976, as interpreted by the supreme court in Dept. of Rev. of Oregon v. ACF Indus., Inc., 510 U.S. 332 (1994); Burlington Northern R.R. v. Huddleston, 94 F.3d 1413 (10th Cir. 1996).

39-22-612. Certificate of nonresidence. (Repealed)

Source: L. 64: R&RE, p. 795, § 1. C.R.S. 1963: § 138-1-76. L. 77: Entire section repealed, p. 1779, § 2, effective July 1.

39-22-613. Oath and affidavit. (Repealed)

Source: L. 64: R&RE, p. 796, § 1. C.R.S. 1963: § 138-1-77. L. 77: Entire section repealed, p. 1779, § 2, effective July 1.

39-22-614. Contents of application. (Repealed)

Source: L. 64: R&RE, p. 796, § 1. C.R.S. 1963: § 138-1-78. L. 77: Entire section repealed, p. 1779, § 2, effective July 1.

39-22-615. Duration and renewal of certificate. (Repealed)

Source: L. 64: R&RE, p. 796, § 1. C.R.S. 1963: § 138-1-79. L. 77: Entire section repealed, p. 1779, § 2, effective July 1.

39-22-616. Fees. (Repealed)

Source: L. 64: R&RE, p. 797, § 1. C.R.S. 1963: § 138-1-80. L. 77: Entire section repealed, p. 1779, § 2, effective July 1.

39-22-617. Exemption of holder of certificate. (Repealed)

Source: L. 64: R&RE, p. 797, § 1. C.R.S. 1963: § 138-1-81. L. 77: Entire section repealed, p. 1779, § 2, effective July 1.

39-22-618. False statements deemed perjury. (Repealed)

Source: L. 64: R&RE, p. 797, § 1. C.R.S. 1963: § 138-1-82. L. 77: Entire section repealed, p. 1779, § 2, effective July 1.

39-22-619. Certificate improperly procured. (Repealed)

Source: L. 64: R&RE, p. 797, § 1. C.R.S. 1963: § 138-1-83. L. 77: Entire section repealed, p. 1779, § 2, effective July 1.

39-22-620. Review of action of executive director. (Repealed)

Source: L. 64: R&RE, p. 798, § 1. C.R.S. 1963: § 138-1-84. L. 77: Entire section repealed, p. 1779, § 2, effective July 1.

39-22-621. Interest and penalties. (1) If any tax due under this article is not paid when due, by reason of extension granted, or otherwise, interest shall be added thereto at the rate imposed under section 39-21-110.5 from the due date thereof, in addition to any penalties which may be imposed by other provisions of this section. Interest on any deficiency in tax shall begin to accrue on the date prescribed in this article for payment of the tax.

(2) (a) If any person fails to file a return at the time required by the provisions of this article and no intent to evade the tax exists, and if there is a balance due to be paid with such return, there shall be collected as a penalty the sum of five dollars for such failure or five percent of the proper amount of tax on such return if the failure is for not more than one month, with an additional one-half percent for each additional month or fraction thereof during which such failure continues, not exceeding twelve percent in the aggregate, whichever is greater.

(b) If any person fails to pay any tax by the due date under the provisions of this article, there shall be collected as a penalty the sum of five dollars for such failure or five percent of the amount of such tax if the failure is for not more than one month, with an additional five-tenths of one percent for each additional month or fraction thereof during which such failure continues, not exceeding twelve percent in the aggregate, whichever is greater.

(c) As used in paragraphs (a) and (b) of this subsection (2), "tax" means the net amount of tax required to be shown on the return reduced by any amount paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed on the return. If the penalties provided for in paragraphs (a) and (b) of this subsection (2) both apply, then only the larger of the two penalties shall be assessed.

(d) If any person fraudulently or willfully fails to file any return, there shall be collected as a penalty for such failure the sum of seventy-five dollars or one hundred percent of the amount of the tax, if any, whichever is greater.

(e) If any person files a fraudulent, frivolous, or willfully false return, there shall be collected as a penalty the sum of one hundred fifty dollars or one hundred fifty percent of the amount of the tax, if any, whichever is greater.

(f) If, after determination and assessment of any tax imposed by this article, any person fails to pay the same within the time limited by any notice and demand sent to him by the executive director, there shall be collected as a penalty for such failure a sum equal to fifteen percent of the amount of the tax demanded.

(g) If any person fraudulently fails to pay any tax when due under the provisions of this article or willfully seeks to evade the payment thereof, there shall be collected as a penalty for such failure a sum equal to one hundred fifty percent of the amount of the tax.

(g.5) (I) If a tax return or a claim for refund is prepared, for compensation, by a person other than the taxpayer and if an understatement of liability with respect to such return or claim is due to the preparer's willful or reckless disregard of applicable laws or rules, as evidenced by the repeated assertion of a position that the preparer knew or should have known did not have a realistic possibility of being sustained on its merits, there shall be collected from the preparer a penalty of five hundred dollars. If the tax return preparer is employed by another person in the business of tax return preparation and if the employer either ordered the understatement of liability or had knowledge of the understatement of liability and did not attempt to prevent the tax return preparer from making the understatement of liability, an equivalent penalty may also be collected from the employer. A separate

penalty shall be collected for each tax return or claim for refund prepared as described in this paragraph (g.5).

(II) This paragraph (g.5) shall not apply to:

(A) A certified public accountant who is permitted to practice under article 2 of title 12, C.R.S. If the executive director becomes aware of conduct by a tax return preparer exempted by this subparagraph (II) that would, but for such exemption, subject the tax return preparer to a penalty under subparagraph (I) of this paragraph (g.5), the executive director may disclose the name of such tax return preparer to the state board of accountancy.

(B) A person who is regularly or continuously employed by another and, acting at the direction of the employer, prepares that employer's return or claim for refund; or

(C) A person who furnishes only typing, reproducing, or other ministerial or administrative assistance to a tax return preparer.

(h) If any part of any deficiency is due to negligence or disregard of the laws or rules or regulations but without intent to defraud, twenty-five percent of the total amount of the deficiency, in addition to such deficiency, shall be assessed, collected, and paid in the same manner as if it were a deficiency.

(i) All of the penalties provided in paragraphs (a) to (h) of this subsection (2) shall be cumulative and shall be collected at the same time and in the same manner as the tax.

(j) The executive director, for good cause, may waive or reduce any penalties assessed pursuant to this article and interest imposed in excess of the rate imposed pursuant to section 39-21-110.5, upon making a record of his reasons therefor.

(k) The provisions of this section shall not apply to any estimated tax required to be paid by or under the provisions of sections 39-22-605 and 39-22-606.

(3) (a) Any person required under this article or required by regulations made under authority thereof, to make a return, keep any records, or supply any information, for the purpose of the computation, assessment, or collection of any tax imposed by this article, who willfully fails to make such return, keep such records, or supply such information at the time required by law or regulations, in addition to other penalties provided by law, shall be punished as provided in section 39-21-118.

(b) Any person required under this article to collect, account for, and pay over any tax imposed by this article, who willfully fails to collect or truthfully account for and pay over such tax, and any person who willfully fails to pay any tax, or in any manner evades or defeats any tax imposed by this article or the payment thereof, in addition to other penalties provided by law, shall be punished as provided in section 39-21-118.

(c) "Person", as used in this subsection (3), includes an officer or employee of a corporation or a member or employee of a partnership or limited liability company, who as such an officer, employee, or member is under a duty to perform the act in respect to which the violation occurs.

Source: L. 64: R&RE, p. 799, § 1. C.R.S. 1963: § 138-1-87. L. 75: (2) R&RE, p. 1496, § 1, effective February 27. L. 77: (3)(b) amended, p. 886, § 73, effective July 1, 1979. L. 81: (1) and (2)(a) amended, p. 1865, § 9, effective June 8. L. 85: (2)(d) to (2)(g), (2)(j), (3)(a), and (3)(b) amended, p. 1254, § 5, effective January 1, 1986. L. 90: (3)(c) amended, p. 457, § 37, effective April 18. L. 2002: (2)(e) amended, p. 531, § 4, effective August 7. L. 2008: (2)(g.5) added, p. 433, § 2, effective July 1.

Editor's note: The effective date for amendments made to this section by chapter 216, L. 77, was changed from July 1, 1978, to April 1, 1979, by chapter 1, First Extraordinary Session, L. 78, and was subsequently changed to July 1, 1979, by chapter 157, § 23, L. 79. See *People v. McKenna*, 199 Colo. 452, 611 P.2d 574 (1980).

ANNOTATION

Law reviews. For article, "An Update of Appendices from Collecting Pre- and Post-Judgment Interest in Colorado", see 15 Colo. Law. 990 (1986).

Provisions not aimed at compelling disclosure of self-incriminating evidence. Neither the intent nor the effect of the withholding tax provisions is to compel disclosure of self-in-

criminating evidence as is the case of provisions whose design is essentially to ferret out criminal activities. The withholding tax provisions are directed at those members of the public at large who are employers and pay wages to their employees. *People v. McNulty*, 184 Colo. 274, 519 P.2d 1195 (1974).

Subsection (3) applicable to failure to make records or act upon liability. Subsections (3)(a) and (3)(b) show that the general assembly intended those crimes to apply to a defendant's failure to make records of or truthfully act upon his own tax liability. *People v. Vesely*, 41 Colo. App. 325, 587 P.2d 802 (1978).

Subsection (3) requires only intentional and knowing behavior. The word "willfully",

as used in subsection (3)(b), requires proof only that a taxpayer failed "to collect, account for and pay over such tax" intentionally and knowingly and not through accident, mistake, or other innocent cause. *People v. McNulty*, 184 Colo. 274, 519 P.2d 1195 (1974).

Return not containing income information not statutory "return". A taxpayer's return which does not contain any information relating to the taxpayer's income from which the tax can be computed is not a "return" within the meaning of subsection (3)(a). *People v. Vickers*, 199 Colo. 305, 608 P.2d 808 (1980).

Subsection (3)(a) is not a lesser included offense of subsection (3)(b). *People v. McNulty*, 184 Colo. 274, 519 P.2d 1195 (1974).

39-22-622. Refunds. (1) A reserve, in an amount to be determined periodically by the controller, shall be set aside and maintained by the state treasurer from taxes collected under this article and held by the state treasurer for the prompt payment of all refunds.

(2) (a) The department of revenue shall pay refunds within the applicable time period specified in paragraph (b) of this subsection (2). For purposes of this subsection (2), the date of filing shall be the date of receipt of any income tax return by the department of revenue; except that the date of filing of any income tax return received during the month of April shall be deemed to be May 1.

(b) (I) Refunds for income tax returns filed by January 31 of any given year shall be made within fourteen calendar days of the date of filing.

(II) Refunds for income tax returns filed after January 31 but prior to or on the last day of February of any given year shall be made within twenty-one calendar days of the date of filing.

(III) Refunds for income tax returns filed after the last day of February but prior to or on March 31 of any given year shall be made within twenty-eight calendar days of the date of filing.

(IV) Refunds for income tax returns filed after March 31 of any given year shall be made within forty-five calendar days of the date of filing.

(3) If any refund due under this article is not paid when due, interest shall be added thereto at the rate imposed under section 39-21-110.5 from the due date of the refund, as prescribed in subsection (2) of this section, until the refund is mailed to the taxpayer by the department of revenue. In addition to the interest, a penalty equal to five percent of the amount of tax to be refunded shall be added.

(4) The provisions of subsection (2) of this section shall not apply to any return that is being audited or to any return that may take longer than normal to process due to the mathematical or clerical errors contained in said return, to unforeseen delays caused by the failure of processing equipment, because of a tax credit allowed in section 39-22-531, or because the taxpayer claimed an enterprise zone tax credit pursuant to article 30 of this title and the department is awaiting confirmation from the Colorado office of economic development that the taxpayer is eligible for such credit. Such determinations shall be made in good faith by the department of revenue.

(5) Repealed.

Source: L. 64: R&RE, p. 803, § 1. C.R.S. 1963: § 138-1-90. L. 65: p. 1131, § 1 (1). L. 81: Entire section amended, p. 1866, § 10, effective June 8. L. 91: (5) added, p. 1999, § 2, effective May 1. L. 91, 2nd Ex. Sess.: (2) amended, p. 98, § 4, effective January 1, 1992. L. 99: (5) repealed, p. 629, § 42, effective August 4. L. 2009: (2) and (4) amended, (HB 09-1219), ch. 71, p. 242, § 3, effective March 25; (4) amended, (HB 09-1001), ch. 220, p. 1000, § 2, effective August 5. L. 2010: (4) amended, (SB 10-162), ch. 395, p. 1879, § 5, effective January 1, 2012.

Editor's note: Amendments to subsection (4) by House Bill 09-1219 and House Bill 09-1001 were harmonized.

Cross references: For the legislative declaration contained in the 1991 act amending subsection (2), see section 1 of chapter 20 of the supplement to the Session Laws of Colorado 1991, Second Extraordinary Session.

39-22-623. Disposition of collections. (1) The proceeds of all moneys collected under this article, less the reserve retained for refunds, shall be credited as follows:

(a) (I) Repealed.

(II) (A) Effective July 1, 1987, an amount equal to twenty-seven percent of the gross state cigarette tax shall be apportioned to incorporated cities and incorporated towns which levy taxes and adopt formal budgets and to counties. For the purposes of this section, a city and county shall be considered as a city. The city or town share shall be apportioned according to the percentage of state sales tax revenues collected by the department of revenue in an incorporated city or town as compared to the total state sales tax collections that may be allocated to all political subdivisions in the state; the county share shall be the same as that which the percentage of state sales tax revenues collected in the unincorporated area of the county bears to total state sales tax revenues which may be allocated to all political subdivisions in the state. The department of revenue shall certify to the state treasurer, at least annually, the percentage for allocation to each city, town, and county, and such percentage for allocation so certified shall be applied by said department in all distributions to cities, towns, and counties until changed by certification to the state treasurer. In order to qualify for distributions of state income tax moneys, units of local government are prohibited from imposing fees, licenses, or taxes on any person as a condition for engaging in the business of selling cigarettes or from attempting in any manner to impose a tax on cigarettes. For purposes of this paragraph (a), the "gross state cigarette tax" means the total tax before the discount provided for in section 39-28-104 (1).

(B) Moneys apportioned pursuant to this subparagraph (II) shall be included for informational purposes in the general appropriation bill or in supplemental appropriation bills for the purpose of complying with the limitation on state fiscal year spending imposed by section 20 of article X of the state constitution and section 24-77-103, C.R.S.

(b) Following apportionment of the city, town, and county shares pursuant to paragraph (a) of this subsection (1) and pursuant to section 29-21-101, C.R.S., all remaining funds shall be credited to the general fund, and the general assembly shall make appropriations therefrom for the expenses of the administration of this article.

(c) Distribution to each city, town, and county shall be made monthly, no later than the fifteenth day of the second successive month after the month for which cigarette tax collections are made, commencing in October 1973.

(d) Each city, town, and county, upon request and at reasonable times, shall be entitled to verify with the executive director or his designated representative the proceeds to which the local government is entitled pursuant to the provisions of this section.

(e) Where, prior to July 1, 1973, a city or town has pledged the proceeds of all or a portion of its local cigarette tax or tax on the occupation of selling cigarettes for the payment of bonds or other obligations, the city or town shall pledge or place in trust an equivalent amount from its share of the proceeds of the state cigarette tax for the payment of such bonds or other obligations.

(f) Repealed.

Source: L. 64: R&RE, p. 809, § 1. C.R.S. 1963: § 138-1-94. L. 73: p. 1450, § 1. L. 74: (1)(b) amended, p. 432, § 1, effective May 17. L. 77: (1)(a) amended, p. 1793, § 3, effective July 1; (1)(f) added, p. 1811, § 2, effective January 1, 1978. L. 83: (1)(a) amended, p. 2099, § 12, effective October 13; (1)(a) amended, p. 2053, § 27, effective October 14. L. 85: (1)(a) amended, p. 1267, § 5, effective May 30. L. 86: (1)(a) amended, p. 1111, § 10, effective July 1. L. 93: (1)(a)(II) amended, p. 1509, § 10, effective June 6. L. 94: (1)(a)(II) amended, p. 1804, § 2, effective May 31. L. 2002: (1)(f) repealed, p. 1362, § 19, effective July 1.

Editor's note: (1) Amendments to subsection (1)(a) by Senate Bill 83-414 and House Bill 83-1595 were harmonized.

(2) Subsection (1)(a)(I)(B) provided for the repeal of subsection (1)(a)(I), effective July 1, 1987. (See L. 86, p. 1111.)

Cross references: For the procedure for refunds, see § 39-21-108.

39-22-624. Prior rights and liabilities not affected. Nothing in this article shall be construed to affect any right, duty, or liability arising under statutes in effect immediately prior to January 1, 1965, but the same shall be continued and concluded under such prior statutes. Nothing in this article shall revive or reinstate any right or liability previously barred by statute.

Source: L. 64: R&RE, p. 810, § 1. C.R.S. 1963: § 138-1-96.

39-22-625. Application of article - effective date. This article shall apply only with respect to taxable years beginning after December 31, 1964, and became effective on January 1, 1965.

Source: L. 64: R&RE, p. 810, § 1. C.R.S. 1963: § 138-1-97.

39-22-626. Applicability of amendments to this article to income tax years. For purposes of determining the applicability of any addition to, modification of, or deletion from this article, an income tax year which varies from a fifty-two to a fifty-three week period shall be deemed to have commenced on the first day of the calendar month beginning nearest to the first day of the fifty-two or fifty-three week year.

Source: L. 79: Entire section added, p. 1446, § 36, effective July 3.

39-22-627. Temporary adjustment of rate of income tax - refund of excess state revenues - authority of executive director. (1) (a) Subject to the provisions of this section, if, for any state fiscal year commencing on or after July 1, 2010, the amount of state revenues in excess of the limitation on state fiscal year spending imposed by section 20 (7) (a) of article X of the state constitution that are required to be refunded for such state fiscal year exceeds the amount specified in paragraph (b) of this subsection (1), the executive director shall temporarily reduce the state income tax rate for the income tax year commencing during the calendar year in which the state fiscal year ended from four and sixty-three one-hundredths percent of the federal taxable income of every individual, estate, trust, and corporation, as specified in sections 39-22-104 (1.7) and 39-22-301 (1) (d) (I) (I), to four and one-half percent of the federal taxable income of every individual, estate, trust, and corporation to refund excess state revenues that are required to be refunded pursuant to section 20 (7) (d) of article X of the state constitution.

(b) In order for the provisions of paragraph (a) of this subsection (1) to take effect, the amount of state revenues required to be refunded for the specified state fiscal year shall exceed the total of the adjusted amount set forth in section 39-22-123 (4) (c), plus the estimated amount by which state revenues would be decreased as the result of a reduction in the state income tax rate from four and sixty-three one-hundredths percent to four and one-half percent of federal taxable income, as determined pursuant to this section.

(2) Except as otherwise provided in subsection (3) of this section, no later than October 1, 2011, and no later than each October 1 thereafter of any calendar year during which it is certified in accordance with the provisions of section 24-77-106.5, C.R.S., that state revenues exceed the limitation on state fiscal year spending imposed by section 20 (7) (a) of article X of the state constitution for the state fiscal year ending in that calendar year and exceed any amount that the voters statewide have authorized the state to retain and spend for the state fiscal year ending in that calendar year, the executive director shall estimate the amount by which state revenues would be decreased as the result of a reduction in the state income tax rate from four and sixty-three one-hundredths percent to four and one-half

percent of federal taxable income for the income tax year commencing during the calendar year in which the state fiscal year ended.

(3) If one or more ballot questions are submitted to the voters at a statewide election to be held in November of any given calendar year that seek authorization for the state to retain and spend all or any portion of the amount of excess state revenues for the state fiscal year ending during said calendar year, the executive director shall not reduce the state income tax rate until the results of said election are known so that the state income tax rate may be reduced only if, after the results of said election, the amount of excess state revenues required to be refunded for the state fiscal year exceeds the total of the adjusted amount set forth in section 39-22-123 (4) (c), plus the estimated amount by which state revenues would be decreased as a result of a reduction in the state income tax rate from four and sixty-three one-hundredths percent to four and one-half percent of federal taxable income pursuant to this section.

(4) In estimating the amount by which state revenues would be decreased as the result of a reduction in the state income tax rate in accordance with the provisions of this section, the executive director shall utilize the most recent data available from the staff of the legislative council regarding the estimate of state revenues generated by the state income tax for the applicable income tax year.

(5) (a) Upon estimating the amount by which state revenues would be decreased as the result of a reduction in the state income tax rate for any income tax year in accordance with the provisions of this section, the executive director shall notify in writing the executive committee of the legislative council created pursuant to section 2-3-301 (1), C.R.S., of any amount so estimated and the basis for such estimate. Such written notification shall be given within five working days after such estimate is completed, but such written notification shall be given no later than October 1 of the calendar year.

(b) It is the function of the executive committee of the legislative council to review and approve or disapprove such estimated amount within twenty days of receipt of such written notification from the executive director. Any estimate of the amount by which state revenues would be decreased as the result of a reduction in the state income tax rate as estimated pursuant to the provisions of this section that is not approved or disapproved by the executive committee within said twenty days shall be automatically approved; except that, if within said twenty days the executive committee schedules a hearing on such estimated amount by which state revenues would be decreased as the result of a reduction in the state income tax rate reduction, such automatic approval shall not occur unless the executive committee does not approve or disapprove such estimated amount after the conclusion of such hearing. Any hearing conducted by the executive committee pursuant to the provisions of this paragraph (b) shall be held no later than twenty-five days after receipt of such written notification from the executive director.

(c) (I) If the executive committee of the legislative council disapproves the estimated amount by which state revenues would be decreased as the result of a reduction in the state income tax rate as estimated by the executive director, the executive committee shall specify the estimated amount by which state revenues would be decreased as the result of a reduction in the state income tax rate so that the executive director can determine whether to implement the reduced state income tax rate. Any estimated amount by which state revenues would be decreased as the result of a reduction in the state income tax rate as specified by the executive committee pursuant to this subparagraph (I) shall be estimated in accordance with the provisions of this section.

(II) The executive director shall not adjust the state income tax rate until the estimated amount by which state revenues would be decreased as the result of a reduction in the state income tax rate estimate has been approved pursuant to the provisions of paragraph (b) of this subsection (5).

(d) Any income tax rate adjustment made pursuant to the provisions of this section shall be made by rules promulgated by the executive director in accordance with article 4 of title 24, C.R.S.

(6) If, based on the financial report prepared by the controller in accordance with section 24-77-106.5, C.R.S., the controller certifies that the amount of the state revenues for any state fiscal year commencing on or after July 1, 2010, exceeds the limitation on state

fiscal year spending imposed by section 20 (7) (a) of article X of the state constitution for that state fiscal year and exceeds the amount of excess state revenues that the voters statewide have authorized the state to retain and spend for that state fiscal year by less than the total of the adjusted amount set forth in section 39-22-123 (4) (c), plus the estimated amount by which state revenues would be decreased as the result of a reduction in the state income tax rate from four and sixty-three one-hundredths percent to four and one-half percent of federal taxable income as calculated by the executive director pursuant to subsection (2) of this section, then the reduction in the state income tax rate allowed pursuant to subsection (1) of this section shall not be allowed for the income tax year commencing during the calendar year in which the state fiscal year ended.

(7) Repealed.

(8) The general assembly finds and declares that a temporary state income tax rate reduction is a reasonable method of refunding a portion of the excess state revenues required to be refunded in accordance with section 20 (7) (d) of article X of the state constitution.

Source: L. 2005: Entire section added, p. 1362, § 3, effective June 6. **L. 2010:** (7) repealed, (SB 10-212), ch. 412, p. 2032, § 1, effective July 1; (1)(b), (3), and (6) amended, (HB 10-1002), ch. 69, p. 239, § 1, effective August 11.

SUBPART 2

REPORTABLE TRANSACTIONS

Cross references: For the legislative declaration contained in the 2009 act adding this subpart 2, see section 1 of chapter 75, Session Laws of Colorado 2009.

39-22-651. Short title - citation. This subpart 2 shall be comprised of sections 39-22-651 to 39-22-659 and may be cited as subpart 2. This subpart 2 shall be known and may be cited as the "Colorado Reportable Transactions Act".

Source: L. 2009: Entire section added, (HB 09-1093), ch. 75, p. 271, § 4, effective April 2.

39-22-652. Definitions. For purposes of this subpart 2, unless the context otherwise requires:

(1) "Colorado combined group" means a group of affiliated C corporations required or allowed to file a combined report pursuant to section 39-22-303.

(2) "Department" means the department of revenue.

(3) "Income tax" means a tax imposed under this article.

(4) "Income tax return" means a return filed under section 39-22-601.

(5) "Listed transaction" means a transaction that is:

(a) The same as, or substantially similar to, a transaction or arrangement specifically identified as a listed transaction by the United States secretary of the treasury in written materials interpreting the requirements of section 6011 of the internal revenue code;

(b) A transaction between a captive real estate investment trust as defined in section 39-22-503 (2) and its more than fifty percent beneficial owner as described in section 39-22-503 (2) (a); or

(c) A transaction between a captive regulated investment company as defined in section 39-22-501 (2) and its more than fifty percent beneficial owner as described in section 39-22-501 (2) (a).

(6) "Material advisor" shall have the same meaning as set forth in section 6111 of the internal revenue code.

(7) "Reportable transaction" means any transaction or arrangement that is the same as any transaction or arrangement described in 26 CFR 1.6011-4 (b) (2) to (b) (6) but shall not include any transactions specifically excluded by the internal revenue service.

Source: L. 2009: Entire section added, (HB 09-1093), ch. 75, p. 271, § 4, effective April 2.

39-22-653. Taxpayer disclosure of reportable or listed transactions. (1) A taxpayer shall be subject to the provisions of this section for each taxable year in which the taxpayer participates in a reportable or listed transaction.

(2) A taxpayer subject to the provisions of this section shall disclose any reportable or listed transaction to the department in a disclosure statement as specified in subsection (5) of this section; except that, in the case of multiple transactions described in section 39-22-652 (5) (b) or (5) (c) that occur within a single tax year, in lieu of a disclosure for each transaction with a regulated investment company or a real estate investment trust, a taxpayer may file a disclosure for multiple transactions with a regulated investment company or real estate investment trust showing the name and ownership of each such entity and each such entity's total assets and total income earned prior to any dividend paid deduction.

(3) If a taxpayer participates in or has participated in any reportable or listed transaction for any period that is still open for assessment pursuant to section 39-21-107 as of the due date of the taxpayer's income tax return, then the taxpayer shall file a disclosure statement as specified in subsection (5) of this section with respect to the reportable or listed transaction.

(4) (a) Any statement that is required to be filed or disclosure required to be made by this section with respect to any tax year for which the return has already been filed by a date sixty days after April 2, 2009, and that is filed or made prior to or together with the taxpayer's next filed return shall be considered timely filed or made.

(b) Any statement that is required to be filed or disclosure required to be made by this section with respect to any tax year the return for which has not been filed by a date sixty days after April 2, 2009, and that is filed or made on or before July 1, 2010, shall be considered timely filed or made.

(c) The statute of limitations with respect to any return for which a statement is required to be filed or disclosure required to be made by this section shall be tolled from April 2, 2009, until such statement or disclosure is filed or made, but in no event shall the statute of limitations be tolled for more than twenty-four months.

(5) (a) With respect to any reportable transaction or with respect to any listed transaction as specified in section 39-22-652 (5) (a), the taxpayer shall, at the taxpayer's discretion, file with the taxpayer's next filed return a copy of the federal disclosure form or a form specified by the department.

(b) With respect to any listed transaction not specified in section 39-22-652 (5) (a), the department may specify the form and manner of any statement required to be filed or disclosure required to be made, which statement shall be filed with the taxpayer's next filed return.

Source: L. 2009: Entire section added, (HB 09-1093), ch. 75, p. 272, § 4, effective April 2.

39-22-654. Additional listed transactions - report. (1) The department shall submit a report to the finance committees of the senate and house of representatives, or any successor committees, by January 31, 2010, and on or before every January 31 thereafter, its recommendation for the inclusion of any additional listed transactions for purposes of this subpart 2.

(2) The department shall consult with any interested parties prior to the submission of the report as specified in subsection (1) of this section.

Source: L. 2009: Entire section added, (HB 09-1093), ch. 75, p. 273, § 4, effective April 2.

39-22-655. Penalty for failure to disclose a reportable or listed transaction. (1) (a) Except as provided in paragraph (b) of this subsection (1), a taxpayer that fails to

disclose a reportable transaction as required by section 39-22-653 shall be subject to a penalty of up to fifteen thousand dollars.

(b) A taxpayer that fails to disclose a listed transaction as required by section 39-22-653 shall be subject to a penalty of up to fifty thousand dollars.

(2) Any penalty imposed by this section shall be in addition to any other penalty imposed by articles 21 and 22 of this title.

(3) For purposes of this section, if two or more members of the same combined report or consolidated return participate in the same reportable or listed transaction, the penalty imposed by subsection (1) of this section shall only be imposed once on the combined report or consolidated return.

Source: L. 2009: Entire section added, (HB 09-1093), ch. 75, p. 273, § 4, effective April 2.

39-22-656. Material advisor - disclosure of reportable or listed transactions.

(1) (a) A material advisor shall disclose any reportable or listed transaction to the department on a form provided by the department within six months of each transaction.

(b) The disclosure described in paragraph (a) of this subsection (1) shall include information identifying and describing the reportable or listed transaction and any potential tax benefits expected to result from the transaction, and the disclosure may include other information as required by the department by rules promulgated in accordance with section 39-21-112 (1).

(2) If a material advisor is required to file an income tax return disclosing a reportable transaction under section 6111 of the internal revenue code, the material advisor shall provide the department with a copy of the income tax return.

Source: L. 2009: Entire section added, (HB 09-1093), ch. 75, p. 274, § 4, effective April 2.

39-22-657. Material advisor - maintenance of list. (1) For each reportable or listed transaction, a material advisor shall maintain a list of the persons to which the material advisor provides material aid, assistance, or advice with respect to organizing, managing, promoting, selling, implementing, insuring, or carrying out a reportable or listed transaction.

(2) The list required by subsection (1) of this section shall include:

(a) The name of each person described in subsection (1) of this section that is doing business in this state, a member of a Colorado combined group, or a member of an affiliated group as defined in section 1504 of the internal revenue code that includes a taxpayer doing business in this state;

(b) The same information required to be contained in the list described in 26 CFR 301.6112-1; and

(c) Any additional information required by the department by rules promulgated in accordance with section 39-21-112 (1).

(3) The list required by subsection (1) of this section shall be maintained in the same form and manner as the list described in 26 CFR 301.6112-1.

(4) A material advisor required to maintain a list under subsection (1) of this section shall:

(a) Make the list available to the department upon written request by the department; and

(b) Retain the information that is required to be included on the list for seven years from the date that the information is included.

(5) The department shall promulgate rules in accordance with section 39-21-112 (1) establishing procedures to implement this section.

Source: L. 2009: Entire section added, (HB 09-1093), ch. 75, p. 274, § 4, effective April 2.

39-22-658. Material advisor - penalties. (1) The penalty for the failure of a material advisor to disclose a reportable or listed transaction as required by section 39-22-656 (1) (a) shall be up to twenty thousand dollars.

(2) If a material advisor that is required to disclose a reportable or listed transaction in accordance with section 39-22-656 (1) (a) provides false or incomplete information to the department, then an additional penalty shall be imposed of up to twenty thousand dollars.

(3) If a material advisor that is required to maintain a list under section 39-22-657 (1) fails to make that list available to the department within a twenty-day period after the day on which the department mails a written request for that list, the material advisor shall be subject to a penalty of ten thousand dollars for each day that the material advisor fails to make that list available to the department after the expiration of the twenty-day period.

(4) A penalty imposed by this section shall be in addition to any other penalty imposed by articles 21 and 22 of this title.

Source: L. 2009: Entire section added, (HB 09-1093), ch. 75, p. 275, § 4, effective April 2.

39-22-659. Waiver, reduction, or compromise of penalty for reasonable cause. Upon making a record of its actions, and upon reasonable cause shown, the department may waive, reduce, or compromise a penalty imposed by this subpart 2.

Source: L. 2009: Entire section added, (HB 09-1093), ch. 75, p. 275, § 4, effective April 2.

PART 7

NONGAME WILDLIFE VOLUNTARY CONTRIBUTION

39-22-701. Legislative declaration. The general assembly hereby declares that wildlife species which are endangered, threatened with extinction, or not commonly pursued, killed, or consumed either for sport or profit, referred to in this part 7 as “nongame wildlife”, have need of special protection and that it is in the public interest to preserve, protect, perpetuate, and enhance nongame wildlife resources of this state through preservation of a satisfactory environment and an ecological balance. The general assembly specifically recognizes that such nongame wildlife includes protected wildlife, endangered and threatened wildlife, aquatic wildlife, specialized habitat wildlife, both terrestrial and aquatic types, and mollusks, crustaceans, and other invertebrates under the jurisdiction of the division of parks and wildlife. This part 7 is enacted to provide a means by which such protection may be financed through a voluntary contribution designation on state income tax return forms. The intent of the general assembly is that this program is supplemental to any funding and in no way is intended to take the place of the funding that would otherwise be appropriated for this purpose.

Source: L. 77: Entire part added, p. 1807, § 1, effective January 1, 1978. **L. 84:** Entire section amended, p. 1019, § 1, effective April 5.

39-22-702. Voluntary contribution designation - procedure. For income tax years commencing on or after January 1, 2012, but prior to January 1, 2017, each Colorado state individual income tax return form shall contain a line whereby each individual taxpayer may designate the amount of the contribution, if any, such individual wishes to make to the nongame and endangered wildlife cash fund created in section 39-22-703.

Source: L. 77: Entire part added, p. 1808, § 1, effective January 1, 1978. **L. 79:** (1) amended, p. 1459, § 1, effective June 21. **L. 83:** Entire section amended, p. 1528, § 1, effective April 21. **L. 84:** Entire section R&RE, p. 1019, § 2, effective April 5. **L. 90:** Entire section amended, p. 1738, § 1, effective April 3. **L. 2006:** Entire section amended,

p. 1155, § 1, effective August 7. **L. 2009:** Entire section amended, (HB 09-1294), ch. 171, p. 770, § 1, effective April 22. **L. 2012:** Entire section amended, (HB 12-1050), ch. 20, p. 54, § 1, effective August 8.

39-22-703. Contributions credited to nongame and endangered wildlife cash fund - creation - appropriation. (1) The department of revenue shall determine annually the total amount designated pursuant to section 39-22-702 and shall report such amount to the state treasurer who shall credit such amount to the nongame and endangered wildlife cash fund, which is hereby established in the state treasury. The controller, upon presentation of vouchers properly drawn and signed by the director of the division of parks and wildlife or an authorized employee of the division of administration, shall issue warrants drawn on the appropriate fund. All moneys so deposited in the nongame and endangered wildlife cash fund shall remain in such fund to be used for the purposes set forth in subsection (2) of this section and shall not be deposited in or transferred to the general fund of the state of Colorado or any other fund.

(2) The general assembly shall appropriate annually from the nongame and endangered wildlife cash fund:

(a) To the division of parks and wildlife of the department of natural resources such amount as is necessary for preserving, protecting, perpetuating, and enhancing nongame and endangered wildlife in this state, including the department's administrative expenses in connection therewith;

(b) To the department of revenue its costs of administering the income tax refunds designated as contributions to the fund.

(c) Repealed.

Source: **L. 77:** Entire part added, p. 1808, § 1, effective January 1, 1978. **L. 79:** Entire section amended, p. 1459, § 2, effective June 21. **L. 85:** (2) amended, p. 1277, § 1, effective June 2. **L. 90:** (1), IP(2), and (2)(a) amended, p. 1738, § 2, effective April 3. **L. 92:** (2)(c) repealed, p. 1068, § 3, effective March 16. **L. 94:** (1) amended, p. 1735, § 3, effective January 1, 1995. **L. 2002:** (2)(a) amended, p. 863, § 7, effective August 7. **L. 2004:** (1) amended, p. 1210, § 93, effective August 4.

39-22-704. Repeal of part. This part 7 is repealed, effective January 1, 2018, unless the voluntary contribution to the nongame and endangered wildlife cash fund established in section 39-22-703 is continued or reestablished by the general assembly acting by bill prior to said date.

Source: **L. 77:** Entire part added, p. 1808, § 1, effective January 1, 1978. **L. 83:** Entire section amended, p. 1528, § 2, effective April 21. **L. 84:** Entire section amended, p. 1020, § 3, effective April 5. **L. 87:** Entire section amended, p. 1459, § 1, effective May 8. **L. 90:** Entire section amended, p. 1739, § 3, effective April 3. **L. 95:** Entire section amended, p. 122, § 1, effective March 31. **L. 2006:** Entire section amended, p. 1155, § 2, effective August 7. **L. 2009:** Entire section amended, (HB 09-1294), ch. 171, p. 770, § 2, effective April 22. **L. 2012:** Entire section amended, (HB 12-1050), ch. 20, p. 54, § 2, effective August 8.

PART 8

DOMESTIC ABUSE PROGRAM VOLUNTARY CONTRIBUTION

Editor's note: (1) This part 8 was repealed in 2000 and was subsequently recreated and reenacted in 2000, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this part 8 prior to 2000, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

(2) Prior to this part 8 being recreated and reenacted, § 39-22-803 provided for the repeal of this part 8, effective January 1, 2000. (See L. 94, p. 968.)

39-22-801. Voluntary contribution designation - procedure. For income tax years commencing on or after January 1, 2010, but prior to January 1, 2020, each Colorado state individual income tax return form shall contain a line whereby each individual taxpayer may designate the amount of the contribution, if any, the taxpayer wishes to make to the Colorado domestic abuse program fund created in section 39-22-802.

Source: **L. 2000:** Entire part RC&RE, p. 1013, § 7, effective July 1; entire part RC&RE, p. 1866, § 91, effective August 2. **L. 2006:** Entire section amended, p.1157, § 1, effective August 7. **L. 2010:** Entire section amended, (SB 10-172), ch. 186, p. 671, § 1, effective August 11.

39-22-802. Contributions credited to Colorado domestic abuse program fund - creation - appropriation. (1) The department of revenue shall determine annually the total amount designated pursuant to section 39-22-801 and shall report such amount to the state treasurer. The state treasurer shall credit such amount to the Colorado domestic abuse program fund, a cash fund hereby established in the state treasury. The controller, upon presentation of vouchers properly drawn and signed by the executive director of the department of human services, pursuant to section 26-7.5-105, C.R.S., shall issue warrants drawn on the Colorado domestic abuse program fund. All moneys in the Colorado domestic abuse program fund at the end of a fiscal year, after appropriations made pursuant to subsection (3) of this section, shall remain in the fund to be used for the purposes set forth in article 7.5 of title 26, C.R.S., and shall not revert to the general fund. Any interest earned on moneys in the fund shall remain in the fund to be used for the purposes of article 7.5 of title 26, C.R.S.

(2) The executive director of the department of human services shall sign vouchers to draw on the Colorado domestic abuse program fund exclusively for the purpose of exercising his authority under section 26-7.5-104, C.R.S.

(3) The general assembly shall appropriate annually from the Colorado domestic abuse program fund:

(a) To the department of human services such amount as is necessary for carrying out the purposes set forth in article 7.5 of title 26, C.R.S., including the department's administrative costs in connection therewith;

(b) To the department of revenue its costs of administering the income tax refunds designated as contributions to the fund.

(4) Notwithstanding any provision of subsection (1) of this section to the contrary, on June 30, 2011, the state treasurer shall deduct two hundred thousand dollars from the Colorado domestic abuse program fund and transfer such sum to the general fund. The transfer required by this subsection (4) shall be from moneys deposited in the Colorado domestic abuse program fund that were generated from fees collected pursuant to sections 13-32-101 (1) (a) and (1) (b) and 14-2-106 (1) (a), C.R.S., and such transfer shall not include any moneys that were voluntary contributions received pursuant to section 39-22-801.

Source: **L. 2000:** Entire part RC&RE, p. 1013, § 7, effective July 1; entire part RC&RE, p. 1866, § 91, effective August 2. **L. 2002:** (1) amended, p. 863, § 8, effective August 7. **L. 2011:** (4) added, (SB 11-164), ch. 33, p. 94, § 8, effective March 18.

39-22-803. Repeal of part. This part 8 is repealed, effective January 1, 2021, unless the voluntary contribution to the Colorado domestic abuse program fund established in section 39-22-802 is continued or reestablished by the general assembly acting by bill prior to said date.

Source: L. 2000: Entire part RC&RE, p. 1013, § 7, effective July 1; entire part RC&RE, p. 1866, § 91, effective August 2. L. 2006: Entire section amended, p. 1157, § 2, effective August 7. L. 2010: Entire section amended, (SB 10-172), ch. 186, p. 671, § 2, effective August 11.

PART 9

UNITED STATES OLYMPIC COMMITTEE VOLUNTARY CONTRIBUTION

39-22-901 to 39-22-903. (Repealed)

Editor's note: (1) This part 9 was added in 1983, repealed in 1986, recreated and reenacted in 1988, and repealed in 2006. For amendments to this part 9 prior to its repeal in 2006, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

(2) Section 39-22-903 (1) provided for the repeal of this part 9, effective January 1, 2006. (See L. 2002, p. 443.)

PART 10

LIMITATION ON VOLUNTARY CONTRIBUTION PROGRAMS

39-22-1001. Limitation on the duration of voluntary contribution programs - queue - notice. (1) (a) Except as otherwise provided in paragraph (b) of this subsection (1), it is the intent of the general assembly that any program funded by voluntary contributions of income tax refunds that is created on or after June 2, 1985, shall have a sunset clause providing that the program shall apply to no more than three income tax years, unless the program is continued or reestablished by the general assembly acting by bill prior to the date that the program is scheduled to sunset.

(b) There shall be no requirement for a sunset clause for the homeless prevention activities program fund voluntary contribution established in part 13 of this article or the western slope military veterans' cemetery voluntary contribution established in part 19 of this article. All other voluntary contribution programs shall remain on Colorado income tax returns for the income tax years specified in the part in which the voluntary contribution is established and shall be repealed or reestablished as directed in such part.

(2) to (4) (Deleted by amendment, L. 2003, p. 2060, § 2, effective May 22, 2003.)

(5) For income tax years commencing on or after January 1, 2005, every voluntary contribution established in this article shall receive a minimum dollar amount of contributions in each income tax year as follows:

(a) Except as otherwise provided in paragraphs (b) and (c) of this subsection (5), for the period January 1, 2005, through September 30, 2005, and for each January 1 through September 30 thereafter, if the amount designated on Colorado income tax returns as contributed under the provisions of any voluntary contribution established in this article does not equal or exceed seventy-five thousand dollars according to the records of the department of revenue, then any such voluntary contribution shall no longer be effective and shall not be reflected on the Colorado income tax returns made for any subsequent income tax year, regardless of whether the voluntary contribution is reestablished by the general assembly pursuant to subsection (1) of this section.

(b) (I) (A) Notwithstanding paragraph (a) of this subsection (5), for any voluntary contribution that appears on Colorado income tax returns for the first time in the 2002 income tax year or any income tax year thereafter, the amount designated on Colorado income tax returns as contributed under any voluntary contribution established in this article shall equal or exceed seventy-five thousand dollars according to the records of the department of revenue during the January 1 through September 30 period for which moneys are collected for the third income tax year in which the voluntary contribution appears on Colorado income tax returns. Any such voluntary contribution shall not be required to

collect seventy-five thousand dollars in either the first or the second year that it appears on Colorado income tax returns.

(B) For the purposes of sub-subparagraph (A) of this subparagraph (I), a voluntary contribution that previously appeared on income tax returns and was removed for failure to receive the requisite amount of contributions pursuant to either paragraph (a) of this subsection (5) or subparagraph (II) of this paragraph (b) is deemed to be appearing on the form "for the first time" if three income tax years or more elapses between the last year the voluntary contribution appeared on the form and the first year it is replaced on the form.

(II) If any voluntary contribution subject to the requirements of subparagraph (I) of this paragraph (b) does not equal or exceed the requisite amount of contributions for the third income tax year for which it appears on Colorado income tax returns, then the voluntary contribution shall no longer be effective and shall not be reflected on Colorado income tax returns for any subsequent income tax year, regardless of whether the voluntary contribution is reestablished by the general assembly pursuant to subsection (1) of this section.

(III) After any voluntary contribution subject to the requirements of this paragraph (b) has been on Colorado income tax returns for three years, the provisions of paragraph (a) of this subsection (5) shall apply to such voluntary contribution and the provisions of this paragraph (b) shall no longer apply.

(c) (I) Paragraphs (a) and (b) of this subsection (5) shall not apply to the western slope military veterans' cemetery voluntary contribution established in part 19 of this article. Such voluntary contribution shall not be required to receive a minimum amount of contributions in any income tax year.

(II) (Deleted by amendment, L. 2005, p. 738, § 1, effective August 8, 2005.)

(6) Repealed.

(7) No more than fifteen voluntary contributions shall appear on the Colorado income tax return form in any income tax year. If the general assembly, acting by bill in any year, requires more voluntary contributions to appear on the income tax return form than there are lines available on the form, an existing voluntary contribution that is renewed or continued shall take precedence and be placed on the form over a voluntary contribution that does not appear on the form and is not being renewed or continued. Any voluntary contribution that does not appear on the form and is not being renewed or continued but does not take effect pursuant to this subsection (7) shall be placed in the queue created by subsection (8) of this section and shall only become effective in any year in which there is a line available on the income tax return form, as specified in subsection (8) of this section.

(8) (a) If the general assembly, acting by bill in any year, requires more voluntary contributions to appear on the income tax return form than there are lines available on the form, any voluntary contribution that is to appear on the form for the first time shall, notwithstanding the language in or the effective date of the bill creating the voluntary contribution, be placed in a queue, which queue is hereby created. The order of voluntary contributions that are placed in the queue shall be determined by the date and time on which the governor signs the bill creating the voluntary contribution, or at such time that the bill becomes law without the governor's signature, with the bill that was signed or becomes law without a signature first in time being first in the queue, the bill that was signed or becomes law without a signature next in time being second in the queue, and so on.

(b) On November 1 of each year, the executive director shall certify to the revisor of statutes the amount of lines available for voluntary contributions on the income tax return form for the state income tax year commencing on January 1 of the following year.

(c) If a line becomes available on the income tax return form, and notwithstanding the language in or the effective date of the bill creating the voluntary contribution, the voluntary contribution first in the queue shall appear on the form for the number of consecutive tax years specified in the part creating the voluntary contribution beginning with the tax year immediately following the year in which the executive director certifies that there is a line available as specified in paragraph (b) of this subsection (8). If there are two lines available on the form, the voluntary contribution that is second in the queue shall appear on the form for the number of consecutive tax years specified in the part creating the voluntary contribution beginning with the tax year immediately following the year in which the

executive director certifies that there are lines available as specified in paragraph (b) of this subsection (8), and so on.

(9) The department of revenue shall post and periodically update on its official web site the amount of donations received for each voluntary contribution appearing on the Colorado state individual income tax return form.

Source: **L. 85:** Entire part added, p. 1278, § 4, effective June 2. **L. 88:** Entire section amended, p. 1316, § 13, effective May 29. **L. 91:** (2) amended, p. 1999, § 3, effective May 1. **L. 94:** (1) amended, p. 726, § 2, effective April 19; (1) and (2)(a) amended and (3) added, p. 931, § 3, effective April 28. **L. 98:** (3) amended, p. 87, § 3, effective March 23. **L. 99:** (1) amended, p. 305, § 1, effective August 4. **L. 2001:** (2)(a) amended and (4) added, p. 1150, § 5, effective June 5. **L. 2002:** (3) RC&RE, p. 444, § 2, effective August 7. **L. 2003:** Entire section amended, p. 2060, § 2, effective May 22. **L. 2005:** (1)(a), IP(5), (5)(a), (5)(b)(I), (5)(c)(II), and (6) amended, p. 738, § 1, effective August 8. **L. 2011:** (7), (8), and (9) added, (HB 11-1295), ch. 245, p. 1070, § 1, effective May 27; (7) and (8) added, (HB 11-1097), ch. 140, p. 485, § 1, effective August 10; (7) and (8) added, (HB 11-1071), ch. 294, p. 1395, § 1, effective August 10; (7) and (8) added, (SB 11-102), ch. 238, p. 1033, § 1, effective August 10. **L. 2012:** (5)(b)(I) and (7) amended and (6) repealed, (SB 12-055), ch. 119, p. 405, § 1, effective August 8.

Editor's note: (1) Amendments to subsection (1) by Senate Bill 94-156 and House Bill 94-1221 were harmonized.

(2) Subsection (2)(b)(III) provided for the repeal of subsection (2)(b), effective January 1, 1995. (See L. 91, p. 1999.)

(3) Subsection (3)(b) provided for the repeal of subsection (3), effective January 1, 2002. (See L. 98, p. 87.)

PART 11

COLORADO VETERANS' MEMORIAL FUND VOLUNTARY CONTRIBUTION

39-22-1101. Voluntary contribution designation - procedure - repeal. (Repealed)

Source: **L. 88:** Entire part added, p. 1323, § 1, effective April 29.

Editor's note: Subsection (2) provided for the repeal of this section, effective January 1, 1989. (See L. 88, p. 1323.)

39-22-1102. Fund established - contributions - appropriation - repeal. (Repealed)

Source: **L. 88:** Entire part added, p. 1323, § 1, effective April 29.

Editor's note: Subsection (4) provided for the repeal of this section, effective January 1, 1989. (See L. 88, p. 1323.)

PART 12

SPECIAL RESERVE FUND FOR PAYMENT OF CERTAIN REFUNDS

39-22-1201. Fund established - revenue - appropriation - discontinuance of fund - repeal. (Repealed)

Source: **L. 89:** Entire part added, p. 1505, § 2, effective June 10. **L. 90:** (4) amended and (5) added, p. 1150, § 2, effective May 8. **L. 92:** Entire section amended, p. 2197, § 1, effective February 25.

Editor's note: Subsection (7) provided for the repeal of this section, effective March 1, 1992. (See L. 92, p. 2197.)

PART 13

HOMELESS PREVENTION ACTIVITIES PROGRAM FUND - VOLUNTARY CONTRIBUTION

Law reviews: For article, "Hunger and Homelessness in America: A Survey of State Legislation", see 66 Den. U.L. Rev. 277 (1989).

39-22-1301. Voluntary contribution designation - procedure. For income tax years commencing on or after January 1, 1989, each Colorado state individual income tax return form shall contain a line whereby each individual taxpayer may designate the amount of the contribution, if any, he wishes to make to the homeless prevention activities program fund.

Source: L. 89: Entire part added, p. 1228, § 2, effective July 1. L. 91: Entire section amended, p. 1947, § 5, effective April 17. L. 94: Entire section amended, p. 726, § 1, effective April 19.

39-22-1302. Contributions credited to homeless prevention activities program fund - creation - appropriation. (1) The department of revenue shall determine annually the total amount designated pursuant to section 39-22-1301 and shall report such amount to the state treasurer. The state treasurer shall credit such amount to the homeless prevention activities program fund, a cash fund hereby established in the state treasury. All moneys in the homeless prevention activities program fund at the end of a fiscal year, after appropriations made pursuant to subsection (3) of this section, are designated for the purposes set forth in article 7.8 of title 26, C.R.S., and shall not revert to the general fund. Any interest earned on moneys in the fund shall remain in the fund to be used for the purposes of article 7.8 of title 26, C.R.S. At the end of each fiscal year, the state treasurer shall transfer all designated moneys in the fund and all interest earned through the investment of fund moneys to the division of housing within the department of local affairs created in section 24-32-704, C.R.S., for distribution as directed by the advisory committee pursuant to article 7.8 of title 26, C.R.S.

(2) (Deleted by amendment, L. 91, p. 1947, § 6, effective April 17, 1991.)

(3) The general assembly shall appropriate annually from the homeless prevention activities program fund:

(a) (Deleted by amendment, L. 91, p. 1947, § 6, effective April 17, 1991.)

(b) To the department of revenue its costs of administering the income tax refunds designated as contributions to the fund.

(c) Repealed.

(4) The amount of administrative and indirect costs assessed under this section shall be based on the number of FTE allocated by each department referenced in this section for the administration of this part 13, expressed as a percentage of the total FTE of that department. In no case shall the administrative and indirect costs assessed exceed this percentage.

(5) The division of housing within the department of local affairs created in section 24-32-704, C.R.S., is authorized to spend up to five percent of all voluntary contributions to the homeless prevention activities program fund or fifteen thousand dollars, whichever is greater, for costs incurred in administering such program.

Source: L. 89: Entire part added, p. 1228, § 2, effective July 1. L. 91: Entire section amended, p. 1947, § 6, effective April 17. L. 92: (3)(c) repealed, p. 1068, § 6, effective March 16; (5) added, p. 2145, § 3, effective March 25. L. 2002: (1) amended, p. 864, § 9, effective August 7. L. 2012: (1) and (5) amended, (SB 12-158), ch. 151, p. 545, § 7, effective May 3.

39-22-1303. Repeal of part. (Repealed)

Source: L. 89: Entire part added, p. 1229, § 2, effective July 1. L. 91: Entire section amended, p. 1948, § 7, effective April 17. L. 94: Entire section repealed, p. 727, § 3, effective April 19.

PART 14**OPERATION DESERT STORM ACTIVE DUTY
MILITARY VOLUNTARY CONTRIBUTION****39-22-1401. Voluntary contribution designation - procedure - repeal. (Repealed)**

Source: L. 91: Entire part added, p. 2000, § 4, effective May 1.

Editor's note: Subsection (2) provided for the repeal of this section, effective March 15, 1994. (See L. 91, p. 2000.)

39-22-1402. Contributions credited to Operation Desert Storm active duty military fund - appropriations - repeal. (Repealed)

Source: L. 91: Entire part added, p. 2000, § 4, effective May 1. L. 92: (3)(b) repealed, p. 1068, § 7, effective March 16.

Editor's note: Subsection (4) provided for the repeal of this section, effective June 15, 1994. (See L. 91, p. 2000.)

39-22-1403. Late filing of income tax returns. (Repealed)

Source: L. 91: Entire part added, p. 2001, § 4, effective May 1. L. 2004: Entire section repealed, p. 218, § 42, effective August 4.

PART 15**ACTION OLDER AMERICAN VOLUNTEER
PROGRAMS - VOLUNTARY CONTRIBUTION****39-22-1501 to 39-22-1504. (Repealed)**

Editor's note: (1) This part 15 was added in 1993. For amendments to this part 15 prior to its repeal in 2000, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

(2) Section 39-22-1504 provided for the repeal of this part 15, effective January 1, 2000. (See L. 99, p. 1097.)

PART 16**DRUG ABUSE RESISTANCE EDUCATION (D.A.R.E.)
VOLUNTARY CONTRIBUTION****39-22-1601 to 39-22-1604. (Repealed)**

Editor's note: (1) This part 16 was added in 1996. For amendments to this part 16 prior to its repeal in 2000, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

(2) Section 39-22-1604 provided for the repeal of this part 16, effective January 1, 2000. (See L. 96, p. 1569.)

PART 17

CHILD CARE VOLUNTARY CONTRIBUTION

39-22-1701 to 39-22-1705. (Repealed)

Editor's note: (1) This part 17 was added in 1996. For amendments to this part 17 prior to its repeal in 2010, consult the 2009 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

(2) Section 39-22-1705 (1) provided for the repeal of this part 17, effective January 1, 2010. (See L. 99, p. 307.)

PART 18

COLORADO SPECIAL OLYMPICS VOLUNTARY CONTRIBUTION

39-22-1801. Legislative declaration. The general assembly hereby finds and declares that the Colorado Special Olympics provides developmentally disabled children and adults with a unique opportunity to build confidence and social skills through athletic competition. The general assembly recognizes that the Colorado Special Olympics benefits all Coloradans by helping developmentally disabled children and adults successfully integrate into society and become useful and productive citizens. The general assembly further recognizes that citizens of Colorado would be willing to provide additional funds to the Colorado Special Olympics program if given the opportunity. Therefore, the general assembly has enacted this part 18 to provide funding to the Colorado Special Olympics program through voluntary contributions on state individual income tax returns.

Source: L. 97: Entire part added, p. 1143, § 1, effective May 28.

39-22-1802. Voluntary contribution designation - procedure. For income tax years commencing on or after January 1, 2009, but prior to January 1, 2012, each Colorado state individual income tax return form shall contain a line whereby each individual taxpayer may designate the amount of the contribution, if any, such individual wishes to make to the Special Olympics Colorado fund created in section 39-22-1803.

Source: L. 97: Entire part added, p. 1144, § 1, effective May 28. L. 2000: Entire section amended, p. 193, § 1, effective August 2. L. 2003: Entire section amended, p. 2099, § 1, effective August 6. L. 2006: Entire section amended, p. 1017, § 1, effective August 7. L. 2009: Entire section amended, (SB 09-287), ch. 339, p. 1786, § 1, effective August 5.

39-22-1803. Contributions credited to the Special Olympics Colorado fund - creation - appropriation. (1) The department of revenue shall determine annually the total amount designated pursuant to section 39-22-1802 and shall report such amount to the state treasurer. The state treasurer shall credit such amount to the Special Olympics Colorado fund, which fund is hereby created in the state treasury. At the end of each fiscal year, the state treasurer shall transfer all designated moneys in the fund and all interest derived from the deposit and investment of such moneys to the Colorado Special Olympics. All interest derived from the deposit and investment of moneys in the fund shall be credited to the fund.

(2) The Colorado Special Olympics shall use moneys received pursuant to subsection (1) of this section only for transportation, equipment, and uniforms for participants in the Colorado Special Olympics program.

Source: **L. 97:** Entire part added, p. 1144, § 1, effective May 28. **L. 98:** (1) amended, p. 829, § 53, effective August 5. **L. 2000:** (1) amended, p. 1553, § 31, effective August 2. **L. 2006:** (1) amended, p. 1017, § 2, effective August 7.

39-22-1804. Repeal of part. This part 18 is repealed, effective January 1, 2013, unless the voluntary contribution to the Special Olympics Colorado fund established by section 39-22-1803 is continued or reestablished by the general assembly acting by bill prior to said date.

Source: **L. 2006:** Entire section added, p. 1018, § 3, effective August 7. **L. 2009:** Entire section amended, (SB 09-287), ch. 339, p. 1786, § 2, effective August 5.

PART 19

WESTERN SLOPE MILITARY VETERANS' CEMETERY VOLUNTARY CONTRIBUTION

39-22-1901. Legislative declaration. The general assembly hereby finds and declares that there is no veterans' cemetery to serve the military veterans who reside on the western slope of Colorado. The general assembly believes that the state owes a duty to all of its military veterans to assist in providing adequate burial facilities close to where surviving relatives of deceased military veterans reside. The general assembly further finds that the federal department of veterans affairs will reimburse the state for one hundred percent of the costs to establish, expand, or improve a state veterans' cemetery. The general assembly further recognizes that citizens of Colorado may be willing to provide additional funds for the operation and maintenance of such cemetery if given the opportunity. Therefore, the general assembly has enacted this part 19 to provide funding to the western slope military veterans' cemetery fund through voluntary contributions on state individual income tax returns.

Source: **L. 99:** Entire part added, p. 780, § 1, effective May 21.

39-22-1902. Voluntary contribution designation - procedure. For income tax years commencing on or after January 1, 2001, each Colorado state individual income tax return form shall contain a line whereby each individual taxpayer may designate the amount of the contribution, if any, such individual wishes to make to the western slope military veterans' cemetery fund created in section 28-5-708 (1) (a), C.R.S. Such moneys credited to the fund shall be used for the operation and maintenance of a western slope military veterans' cemetery pursuant to section 28-5-708, C.R.S.

Source: **L. 99:** Entire part added, p. 781, § 1, effective May 21. **L. 2001:** Entire section amended, p. 1150, § 3, effective June 5. **L. 2002:** Entire section amended, p. 362, § 25, effective July 1. **L. 2004:** Entire section amended, p. 1210, § 94, effective August 4.

Cross references: For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 121, Session Laws of Colorado 2002.

39-22-1903. Contributions credited to the fund - appropriation. The department of revenue shall determine annually the total amount designated pursuant to section 39-22-1902 and shall report such amount to the state treasurer. The state treasurer shall credit such amount to the western slope military veterans' cemetery fund created in section 28-5-708 (1) (a), C.R.S.

Source: **L. 99:** Entire part added, p. 781, § 1, effective May 21. **L. 2002:** Entire section amended, p. 362, § 26, effective July 1; entire section amended, p. 865, § 11, effective August 7.

Editor's note: Amendments to this section by House Bill 02-1333 and House Bill 02-1413 were harmonized.

Cross references: For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 121, Session Laws of Colorado 2002.

39-22-1904. Repeal of part. (Repealed)

Source: **L. 99:** Entire part added, p. 781, § 1, effective May 21. **L. 2001:** Entire section amended, p. 1150, § 4, effective June 5. **L. 2003:** (3) amended, p. 2063, § 3, effective May 22. **L. 2004:** Entire section repealed, p. 1210, § 95, effective August 4.

PART 20

REFUND OF REVENUES IN EXCESS OF STATE FISCAL YEAR SPENDING LIMITATION

39-22-2001. Legislative declaration - revenues exceeding TABOR limit - sales tax refund. (1) The general assembly hereby finds and declares that:

(a) Section 20 of article X of the state constitution, which was approved by the registered electors of this state in 1992, limits the annual growth of state fiscal year spending;

(b) It is estimated that for fiscal years commencing on or after July 1, 1998, state revenues from sources not excluded from state fiscal year spending will exceed the limitation on state fiscal year spending;

(c) When revenues exceed the state fiscal year spending limitation for any given fiscal year, section 20 (7) (d) of article X of the state constitution requires that the excess revenues be refunded in the next fiscal year unless voters approve a revenue change allowing the state to keep the revenues;

(d) In addition, section 20 (1) of article X of the state constitution states that refunds need not be proportional when prior payments are impractical to identify or return and authorizes the use of any reasonable method for refunding excess revenues;

(e) If voters statewide either do not authorize the state to retain and spend all of the excess revenues for that fiscal year or authorize the state to retain and spend only a portion of the excess revenues for that fiscal year, the state is required to refund the revenues in excess of the state fiscal year spending limitation for that fiscal year that voters have not authorized the state to retain and spend;

(f) It is within the legislative prerogative of the general assembly to enact legislation to implement the refund of state excess revenues for fiscal years commencing on or after July 1, 1998, in compliance with section 20 of article X of the state constitution;

(g) It is a reasonable and necessary exercise of the legislative prerogative to determine that, due to the impossibility of identifying or returning prior payments, it is not feasible to make proportional refunds of state excess revenues;

(h) It is also a reasonable and necessary exercise of the legislative prerogative to determine what constitutes a reasonable method of refunding state excess revenues after consideration of the best information available at the time regarding: The amount and source of excess revenues to be refunded; the qualifications for and number of eligible recipients; and the related administrative expenses;

(i) It is the considered judgment of the general assembly that:

(I) The state excess revenues that are subject to the state fiscal year spending limitation under section 20 of article X of the state constitution for fiscal years commencing on or after July 1, 1998, will be derived from a wide variety of state taxes and state fees ranging from state sales tax to severance and transportation taxes to health service fees to court fines to permit and license fees to higher education fees and should, therefore, be returned to as large a group of Colorado residents as is identifiable and economically feasible;

(II) It is not feasible to make proportional refunds of state excess revenues for fiscal years commencing on or after July 1, 1998, due to the impossibility of identifying or returning prior payments;

(III) It is reasonable and fair to refund state excess revenues, if any, for fiscal years commencing on or after July 1, 1998, to a large group of individuals as a refund of state sales tax revenues since more Coloradans pay state sales tax than any other state tax;

(IV) Notwithstanding the provisions of subparagraphs (I) to (III) of this paragraph (i), it is reasonable and fair to simplify the process used to refund state excess revenues for any fiscal year for which the amount of such state excess revenues falls below a certain threshold by allowing an identical refund of state sales tax revenues to each qualified individual; and

(V) Refunding state excess revenues for fiscal years commencing on or after July 1, 1998, through the state income tax system in the manner set forth in sections 39-22-2002 and 39-22-2003 is a reasonable method for refunding such excess revenues.

Source: L. 99: Entire part added, p. 1305, § 1, effective August 4.

39-22-2002. Fiscal years commencing on or after July 1, 1998 - state sales tax refund - authority of executive director. (1) If, for any state fiscal year commencing on or after July 1, 1998, the amount of state revenues exceeds the limitation on state fiscal year spending imposed by section 20 (7) (a) of article X of the state constitution and voters statewide either have not authorized the state to retain and spend all of the excess revenues for that fiscal year or have authorized the state to retain and spend only a portion of the excess revenues for that fiscal year, the executive director shall, if the amount of the identical individual refund calculated pursuant to paragraph (a) of subsection (2) of this section exceeds fifteen dollars, for the taxable year commencing on or after January 1 of the calendar year in which that fiscal year ended, but prior to January 1 of the subsequent calendar year, calculate a temporary state sales tax refund in accordance with the provisions of this section to refund the amount of excess state revenues that is not refunded by another method established by law.

(2) (a) Subject to the provisions of paragraph (b) of subsection (7) of this section, as applicable, for the taxable year commencing on or after January 1 of the calendar year in which that fiscal year ended, but prior to January 1 of the subsequent calendar year, the executive director shall divide the total amount of excess state revenues that is not refunded by another method established by law and is required to be refunded by the number of qualified individuals expected to claim a refund in order to determine the amount of the refund that each such qualified individual would receive if each individual received an identical refund.

(b) If the amount of the identical individual refund calculated pursuant to paragraph (a) of this subsection (2) is less than or equal to fifteen dollars, the executive director shall allow each qualified individual an identical refund in the manner set forth in section 39-22-2003 (3) (a) and (3) (b).

(3) As used in this section, unless the context otherwise requires, "excess state revenues" means the total combined amount of:

(a) Excess revenues that voters statewide have not authorized the state to retain and spend and that are required to be refunded pursuant to section 20 (7) (d) of article X of the state constitution and that are not refunded by another method established by law for said fiscal year ending in that calendar year; and

(b) Excess revenues that voters statewide did not authorize the state to retain and spend and were required to be refunded pursuant to section 20 (7) (d) of article X of the state constitution for any other fiscal year and that were not refunded by another method established by law prior to said fiscal year, but that were not refunded by the state as required.

(4) No later than October 1 of any given calendar year commencing on or after January 1, 1999, during which the controller certifies, in accordance with the provisions of section 24-77-106.5, C.R.S., that state revenues exceed the limitation on state fiscal year spending imposed by section 20 (7) (a) of article X of the state constitution for the fiscal year ending in that calendar year, the executive director shall, if the amount of the identical individual refund calculated pursuant to subsection (2) of this section exceeds fifteen dollars, calculate the income classifications and the amount of the refund allowed for each income classifi-

cation pursuant to section 39-22-2003 (3) for the taxable year commencing during said fiscal year that would refund the amount of excess state revenues that is not refunded by another method established by law.

(5) If one or more ballot questions are submitted to the voters at a statewide election to be held in November of any given calendar year commencing on or after January 1, 1999, that seek authorization for the state to retain and spend all or any portion of the amount of excess revenues for the fiscal year ending during said calendar year, no later than October 1 of said calendar year, the executive director shall, in addition to the calculations required by subsection (4) of this section:

(a) (I) Calculate the amount of the state sales tax refund that each qualified individual would receive if each individual received an identical refund by dividing the total amount of excess state revenues required to be refunded if one or more of such ballot questions are approved by voters statewide and that is not refunded by another method established by law by the number of qualified individuals expected to claim a refund;

(II) Calculate the amount of the state sales tax refund that each qualified individual would receive if each individual received an identical refund by dividing the total amount of excess state revenues required to be refunded if all of such ballot questions are not approved by voters statewide and that is not refunded by another method established by law by the number of qualified individuals expected to claim a refund;

(b) If the amount of any identical refund calculated pursuant to subparagraph (I) of paragraph (a) of this subsection (5) exceeds fifteen dollars, calculate income classifications and the amount of the refund to be allowed for each income classification pursuant to section 39-22-2003 (3) for the taxable year commencing during said fiscal year that would refund the amount of excess state revenues, if any, required to be refunded if one or more of such ballot questions are approved by voters statewide and that is not refunded by another method established by law;

(c) If the amount of the identical refund calculated pursuant to subparagraph (II) of paragraph (a) of this subsection (5) exceeds fifteen dollars, calculate income classifications and the amount of the refund to be allowed for each income classification pursuant to section 39-22-2003 (3) for the taxable year commencing during said fiscal year that would refund the amount of excess state revenues, if any, required to be refunded if all of such ballot questions are not approved by voters statewide and that is not refunded by another method established by law.

(6) (a) Upon calculating the amount of any identical individual sales tax refund and, if necessary, income classifications and the amount of the refund for each income classification in accordance with the provisions of this section, the executive director shall notify in writing the executive committee of the legislative council created pursuant to section 2-3-301 (1), C.R.S., of any such calculations and the basis for such calculations. Such written notification shall be given within five working days after such calculations are completed, but such written notification shall be given no later than October 1 of the calendar year.

(b) It is the function of the executive committee to review and approve or disapprove such calculated identical individual sales tax refund or such calculated income classifications and refund amount for each income classification within twenty days after receipt of such written notification from the executive director. Any such income classification or refund amount calculated pursuant to the provisions of this section that is not approved or disapproved by the executive committee within said twenty days shall be automatically approved; except that, if within said twenty days the executive committee schedules a hearing on such income classification or refund amount, such automatic approval shall not occur unless the executive committee does not approve or disapprove such income classification or refund amount after the conclusion of such hearing. Any hearing conducted by the executive committee pursuant to the provisions of this paragraph (b) shall be concluded no later than twenty-five days after receipt of such written notification from the executive director.

(c) (I) If the executive committee disapproves any income classification or refund amount calculated by the executive director pursuant to this section, the executive committee shall specify such income classification or refund amount to be implemented by the

executive director. Any income classification or refund amount specified by the executive committee pursuant to this subparagraph (I) shall be calculated or adjusted in accordance with the provisions of this section.

(II) The executive director shall not adjust any income classification or refund amount that has not been approved pursuant to the provisions of paragraph (b) of this subsection (6) or otherwise specified pursuant to subparagraph (I) of this paragraph (c).

(7) (a) The amount of any sales tax refund calculated pursuant to the provisions of this section shall be published in rules promulgated by the executive director in accordance with article 4 of title 24, C.R.S., and shall be included in income tax forms for that taxable year.

(b) If one or more ballot questions are submitted to the voters at a statewide election to be held in November of any calendar year commencing on or after January 1, 1999, that seek authorization for the state to retain and spend all or any portion of the amounts of excess state revenues for the fiscal year ending during said calendar year, the executive director shall not publish rules or income tax forms containing any sales tax refund calculated pursuant to this section until such rules and forms may be published to reflect the impact of the results of said election on the amount of the refund to be allowed pursuant to section 39-22-2003 and that is not refunded by another method established by law.

Source: L. 99: Entire part added, p. 1307, § 1, effective August 4. L. 2002: (1), (4), (5)(b), and (5)(c) amended, p. 1075, § 1, effective June 1; (1), (4), (5)(b), and (5)(c) amended, p. 716, § 6, effective August 7; (1), (4), (5)(b), and (5)(c) amended, p. 736, § 6, effective August 7.

39-22-2003. State sales tax refund - offset against state income tax - qualified individuals. (1) (a) For purposes of this section, "qualified individual" means:

(I) A natural person who is domiciled in this state for the entire taxable year commencing January 1 and ending December 31 of such taxable year and who has state income tax liability under section 39-22-104 for the taxable year or who files a Colorado individual income tax return to claim a refund of Colorado income tax withheld from wages for that tax year;

(II) A natural person who is domiciled in this state for the entire taxable year commencing January 1 and ending December 31 of such taxable year and who is at least eighteen years of age as of December 31 of the taxable year preceding such taxable year;

(III) A natural person who died during the taxable year commencing January 1 and ending December 31, who was domiciled in this state from January 1 of the taxable year until the date of death, and whose estate or spouse has state income tax liability under section 39-22-104 for the taxable year or whose estate or spouse files a Colorado income tax return to claim a refund of Colorado income tax withheld from wages for that tax year; or

(IV) A natural person who died during the taxable year commencing on January 1 and ending December 31, who was domiciled in this state from January 1 of the taxable year until the date of death, and who was at least eighteen years of age as of December 31 immediately prior to that taxable year.

(b) "Qualified individual" does not include:

(I) Any natural person who was convicted of a felony and who served a sentence of incarceration in a correctional facility operated by or under contract with the department of corrections or in a county or municipal jail awaiting transfer to the department of corrections pursuant to section 16-11-308, C.R.S., or in both such facility and jail for a total of one hundred eighty days or more during the fiscal year ending during the taxable year, regardless of whether such person meets the qualifications set forth in paragraph (a) of this subsection (1);

(II) Any natural person who is convicted of a misdemeanor or is adjudicated for an offense that would constitute a misdemeanor if committed by an adult and who is incarcerated in a county or municipal jail for a total of one hundred eighty days or more during the fiscal year ending during the taxable year, regardless of whether such person meets the qualifications set forth in paragraph (a) of this subsection (1);

(III) Any natural person under eighteen years of age who is adjudicated for an offense that would constitute a felony if committed by an adult and who was committed to the department of human services for a total of one hundred eighty days or more during the fiscal year ending during the taxable year, regardless of whether such person meets the qualifications set forth in paragraph (a) of this subsection (1).

(1.5) For purposes of this section, "adjusted gross income" means:

(a) For the taxable year commencing on January 1, 1999, and ending December 31, 1999, and for the taxable year commencing on January 1, 2000, and ending December 31, 2000, the combined total of:

(I) Federal adjusted gross income; and

(II) Social security benefits excluded from federal adjusted gross income for the tax year.

(b) For the taxable year commencing on January 1, 2001, and ending December 31, 2001, and for each subsequent taxable year thereafter, the combined total of:

(I) Federal adjusted gross income;

(II) Social security benefits excluded from federal adjusted gross income for the tax year;

(III) Lump-sum distributions from pension and profit sharing plans excluded from federal adjusted gross income that are added to federal taxable income pursuant to section 39-22-104 (3) (c); and

(IV) The amount of interest income from state and local bonds added to federal taxable income pursuant to section 39-22-104 (3) (b).

(2) With respect to the taxable year commencing on January 1, 1999, and ending December 31, 1999, and for each subsequent taxable year, there shall be allowed to each qualified individual a state sales tax refund in an amount specified in subsection (3) of this section to be claimed in the manner specified in subsection (4) of this section if there were excess state revenues for the fiscal year ending in that tax year that voters statewide have not authorized the state to retain and spend and that are required to be refunded pursuant to section 20 (7) (d) of article X of the state constitution.

(3) The amount of the refund allowed under this section shall be as follows:

(a) For a qualified individual filing a single return, the amount of the identical individual sales tax refund calculated pursuant to section 39-22-2002 (2) or (5) (a) if the amount of such identical individual refund is less than or equal to fifteen dollars;

(b) For any two qualified individuals filing a joint return, double the amount of the identical individual sales tax refund calculated pursuant to section 39-22-2002 (2) or (5) (a) if the amount of such identical individual refund is less than or equal to fifteen dollars;

(c) For a qualified individual filing a single return, if the amount of the identical individual sales tax refund calculated pursuant to section 39-22-2002 (2) or (5) (a) exceeds fifteen dollars:

(I) If the qualified individual's adjusted gross income for the tax year is less than or equal to twenty-five thousand dollars, the refund shall be in an amount equal to the amount of excess state revenues required to be refunded pursuant to subsection (1) of this section, multiplied by twenty-five percent, divided by the estimated number of said qualified individuals expected to claim the credit for that taxable year;

(II) If the qualified individual's adjusted gross income for the tax year is greater than twenty-five thousand dollars but not more than fifty thousand dollars, the refund shall be in an amount equal to the amount of excess state revenues required to be refunded pursuant to subsection (1) of this section, multiplied by twenty-three percent, divided by the estimated number of said qualified individuals expected to claim the credit for that taxable year;

(III) If the qualified individual's adjusted gross income for the tax year is greater than fifty thousand dollars but not more than seventy-five thousand dollars, the refund shall be in an amount equal to the amount of excess state revenues required to be refunded pursuant to subsection (1) of this section, multiplied by nineteen percent, divided by the estimated number of said qualified individuals expected to claim the credit for that taxable year;

(IV) If the qualified individual's adjusted gross income for the tax year is greater than seventy-five thousand dollars but not more than one hundred thousand dollars, the refund

shall be in an amount equal to the amount of excess state revenues required to be refunded pursuant to subsection (1) of this section, multiplied by twelve percent, divided by the estimated number of said qualified individuals expected to claim the credit for that taxable year;

(V) If the qualified individual's adjusted gross income for the tax year is greater than one hundred thousand dollars but not more than one hundred twenty-five thousand dollars, the refund shall be in an amount equal to the amount of excess state revenues required to be refunded pursuant to subsection (1) of this section, multiplied by six percent, divided by the estimated number of said qualified individuals expected to claim the credit for that taxable year;

(VI) If the qualified individual's adjusted gross income for the tax year is greater than one hundred twenty-five thousand dollars, the refund shall be in an amount equal to the amount of excess state revenues required to be refunded pursuant to subsection (1) of this section, multiplied by fifteen percent, divided by the estimated number of said qualified individuals expected to claim the credit for that taxable year;

(d) For two qualified individuals filing a joint return, if the amount of the identical individual sales tax refund calculated pursuant to section 39-22-2002 (2) or (5) (a) exceeds fifteen dollars, the amount of the refund shall be based upon the aggregate adjusted gross income of the qualified individuals and shall be an amount equal to double the amount of the refund allowed under paragraph (c) of this subsection (3) for such aggregate income amount.

(4) (a) The amount of the refund allowed under subsection (2) of this section for the taxable year commencing January 1, 2000, and ending December 31, 2000, and for each subsequent taxable year, shall be the same as provided in subsection (3) of this section; except that, for each such taxable year, the executive director shall adjust:

(I) The amount of adjusted gross income, to the nearest thousand dollars, for each income classification such that the percentage of all qualified individuals who are expected to claim a refund under each income classification for such taxable year remains the same as the percentage of all qualified individuals who claimed a refund under such income classification for the 1999 tax year; and

(II) The amount of the refund allowed for each income classification such that the percentage of excess state revenues to be refunded to all qualified individuals for such income classification for such taxable year remains the same as the percentage of excess state revenues refunded to all qualified individuals for such income classification for the 1999 tax year.

(b) In calculating income classifications or the amount of refund allowed for a given income classification in accordance with the provisions of this section, the executive director shall use the most recent estimate of general fund revenues for the applicable taxable year prepared by the staff of the legislative council of the general assembly in accordance with section 24-75-201.3, C.R.S.

(5) (a) (I) Except as otherwise provided in subparagraph (II) of this paragraph (a), any refund allowed pursuant to this section shall be claimed by a qualified individual as defined in subparagraph (I) or (III) of paragraph (a) of subsection (1) of this section by timely filing an income tax return with the department of revenue for a taxable year for which the refund is allowed in compliance with the provisions of this article.

(II) Any refund allowed pursuant to this section shall be claimed by a qualified individual as defined in subparagraph (I) or (III) of paragraph (a) of subsection (1) of this section or by a qualified individual that is required to file a Colorado individual income tax return for that tax year pursuant to section 39-22-601 (1) (a) who is granted an extension of time to file an income tax return by filing an income tax return with the department of revenue no later than October 15 of the calendar year following the taxable year for which the refund is being claimed. Such qualified individual shall not be required to pay all or any portion of the qualified individual's net tax liability due prior to October 15 of said calendar year in order to be granted an extension of time to file said tax return; except that, pursuant to section 39-22-621, such qualified individual may be subject to a late payment penalty and interest on any net income tax liability not paid by April 15 of said calendar year.

(III) The department of revenue shall not allow said refund claimed on any income tax return not filed in compliance with the provisions of this article. In no event shall the refund claimed by a qualified individual as defined in subparagraph (I) or (III) of paragraph (a) of subsection (1) of this section on any income tax return be:

(A) Disallowed if said return is filed on or before October 15 of the calendar year following the tax year for which the refund is being claimed; and

(B) Allowed if said return is filed after October 15 of the calendar year following the tax year for which the refund is being claimed.

(b) Except as otherwise provided in subparagraph (II) of paragraph (a) of this subsection (5), any refund allowed pursuant to this section shall be claimed by a qualified individual as defined in subparagraph (II) or (IV) of paragraph (a) of subsection (1) of this section by filing an income tax return for the taxable year for which the refund is allowed with the department of revenue no later than April 15 of the calendar year following the tax year for which the refund is being claimed. The department of revenue shall not allow said refund claimed by a qualified individual as defined in subparagraph (II) or (IV) of paragraph (a) of subsection (1) of this section on any income tax return filed with the department of revenue after April 15 of the calendar year following the tax year for which the refund is being claimed.

(c) (I) Notwithstanding any provision of paragraph (b) of this subsection (5) to the contrary, a qualified individual as defined in subparagraph (II) or (IV) of paragraph (a) of subsection (1) of this section who claims a property tax assistance grant pursuant to section 39-31-101 or a heat or fuel expenses assistance grant pursuant to section 39-31-104 may claim a refund authorized by this section on the assistance grant application form described in section 39-31-102 (2). Claiming a refund on such assistance grant application form shall be in lieu of claiming the refund on an income tax return pursuant to paragraph (b) of this subsection (5). Any refund claimed pursuant to this paragraph (c) shall be claimed on or before April 15 of the calendar year following the tax year for which the refund is being claimed.

(II) The department of revenue shall not allow a refund authorized by this section that is claimed on an assistance grant application form if:

(A) The assistance grant application form is filed after April 15 of the calendar year following the tax year for which the refund is being claimed; or

(B) The qualified individual has claimed the refund authorized by this section on an income tax form filed in accordance with paragraph (b) of this subsection (5) for the tax year for which the refund is allowed.

(6) Except as otherwise provided in this subsection (6), if the refund allowed under this section exceeds the income taxes otherwise due on the claimant's income, the amount of the refund shall be refunded to the claimant. The claimant may elect to carry forward the amount of the refund not used as an offset against income taxes or as an offset against subsequent years' income tax liability.

(7) In addition to any other penalties allowed by law, any person who claims but is not eligible to claim the refund allowed pursuant to this section shall be subject to the criminal penalties imposed pursuant to section 39-21-118, as applicable.

(8) The state sales tax refund allowed to any qualified individual under this section shall not be reported by the department of revenue as a payment of a refund, credit, or offset of state income taxes to such qualified individual in any information return required to be filed pursuant to federal law.

(9) (a) The department of revenue shall identify any qualified individual who has been convicted of a felony and who, at the time of filing for a refund pursuant to this section, is incarcerated in a correctional facility operated by or under contract with the department of corrections or in a county or municipal jail awaiting transfer to a correctional facility pursuant to section 16-11-308, C.R.S. The department of revenue shall transfer the amount of any refund owed to said qualified individual to the department of corrections.

(b) The department of corrections shall transmit the amount of said refund as follows:

(I) Except as otherwise provided in paragraph (c) of this subsection (9), if the qualified individual is under a valid court order to pay restitution or costs and under a valid court order or administrative order to pay child support then:

(A) One-half of the refund to the clerk of the district court that issued an order for payment of restitution entered pursuant to article 18.5 of title 16, C.R.S., or an order for costs pursuant to section 18-1.3-701, C.R.S. Such refund shall be credited in the priority specified in section 16-11-101.6 (1), C.R.S.; and

(B) One-half of the refund to the department of human services for application toward the qualified individual's child support obligation for individuals receiving services pursuant to section 26-13-106, C.R.S.; or

(II) If the qualified individual is not under a valid court order or administrative order to pay child support but is under a valid court order to pay restitution or costs, then to the clerk of the district court that issued an order for payment of restitution entered pursuant to article 18.5 of title 16, C.R.S., or an order for costs pursuant to section 18-1.3-701, C.R.S., whereupon such refund shall be credited in the priority specified in section 16-11-101.6 (1), C.R.S.; or

(III) If the qualified individual is not under a valid court order to pay restitution or costs but is under a valid court order or administrative order to pay child support, then to the department of human services for application toward the qualified individual's child support obligation for individuals receiving services pursuant to section 26-13-106, C.R.S.; or

(IV) If the qualified individual is not under a valid court order or administrative order to pay child support and is not under a valid court order to pay restitution or costs, then to the qualified individual subject to other applicable provisions of law.

(c) If a refund is transmitted in accordance with the provisions of subparagraph (I), (II), or (III) of paragraph (b) of this subsection (9) and results in excess refund moneys remaining after satisfaction of the qualified individual's restitution or child support obligation, the excess refund moneys shall be first applied toward any outstanding restitution obligation or child support obligation of the qualified individual before being returned to the qualified individual.

(10) The department of corrections, the department of human services, and each county of the state, to the extent each such county has the capability within existing resources, shall provide in a timely manner the information requested by the department of revenue necessary to identify the persons specified in paragraph (b) of subsection (1) of this section and in subsection (9) of this section. The information shall be provided in the form requested by the department of revenue. The department of revenue shall maintain the confidentiality of any social security number received pursuant to this subsection (10).

Source: L. 99: Entire part added, p. 1310, § 1, effective August 4. L. 2001: (1)(a)(I), (1)(a)(III), (3)(c), (3)(d), (4)(a)(I), (5)(a)(II), and (5)(b) amended and (1.5) added, pp. 73, 71, §§ 2, 1, effective August 8. L. 2002: (9) amended, p. 1557, § 351, effective October 1. L. 2003: (9) amended, p. 2002, § 68, effective May 22. L. 2004: (9) amended, p. 171, § 1, effective August 4.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (9), see section 1 of chapter 318, Session Laws of Colorado 2002.

ANNOTATION

Limitation of the sales tax refund to full-year Colorado residents did not violate the privileges and immunities clause, the equal

protection clause, or the commerce clause of the U.S. Constitution. Thorpe v. State, 107 P.3d 1064 (Colo. App. 2004).

PART 21

COLORADO LOW-INCOME HOUSING TAX CREDIT

39-22-2101. Definitions. As used in this part 21, unless the context otherwise requires:

(1) "Allocation certificate" means a statement issued by the authority certifying that a given development qualifies for the credit and specifying the amount of the credit allowed.

(2) "Authority" means the Colorado housing and finance authority created pursuant to section 29-4-704, C.R.S.

(3) "Compliance period" means the period of fifteen years beginning with the first taxable year of the credit period.

(4) "Credit" means the Colorado low-income housing tax credit allowed pursuant to section 39-22-2102.

(5) "Credit period" means the period of four taxable years beginning with the taxable year in which a qualified development is placed in service. If a qualified development is comprised of more than one building, the development shall be deemed to be placed in service in the taxable year during which the last building of the qualified development is placed in service.

(6) "Department" means the Colorado department of revenue.

(7) "Federal tax credit" means the federal low-income housing tax credit provided by section 42 of the internal revenue code, but excluding the credit referred to in section 42 (h) (4) of the internal revenue code.

(8) "Qualified allocation plan" means the qualified allocation plan adopted by the authority pursuant to section 42 (m) of the internal revenue code.

(9) "Qualified basis" means the qualified basis of the development as determined pursuant to section 42 of the internal revenue code.

(10) "Qualified development" means a "qualified low-income housing project", as that term is defined in section 42 of the internal revenue code, that is located in Colorado and is determined by the authority to be eligible for a federal tax credit whether or not a federal tax credit is allocated with respect to said development.

(11) "Qualified taxpayer" means an individual, a person, firm, corporation, or other entity that owns an interest in a qualified development and is subject to the taxes imposed by this article.

Source: L. 2000: Entire part added, p. 875, § 1, effective August 2.

39-22-2102. Credit against tax - low-income housing developments. (1) For income tax years during the credit period, there shall be allowed to any qualified taxpayer a credit with respect to the income taxes imposed by this article in the amount determined by the authority pursuant to this part 21.

(2) The authority may allocate a credit to an owner of a qualified development by issuing to the owner an allocation certificate. The authority may determine the time at which such allocation certificate is issued. The credit shall be in an amount determined by the authority, subject to the following guidelines:

(a) The credit shall be necessary for the financial feasibility of such development;

(b) In no event shall a credit exceed thirty percent of the qualified basis of the qualified development;

(c) All allocations shall be made pursuant to the qualified allocation plan; and

(d) The aggregate sum of credits allocated annually shall not exceed the limits set forth in subsection (7) of this section.

(3) If an owner of a qualified development receiving an allocation of a credit is a partnership, limited liability company, S corporation, or similar pass-through entity, the owner may allocate the credit among its partners, shareholders, members, or other constituent taxpayers in any manner agreed to by such persons. The owner shall certify to the department the amount of credit allocated to each constituent taxpayer. Each constituent taxpayer shall be allowed to claim such amount subject to any restrictions set forth in this part 21.

(4) No credit shall be allocated pursuant to this part 21 unless the qualified development is the subject of a recorded restrictive covenant requiring the development to be maintained and operated as a qualified development for a period of fifteen taxable years, or such longer period as may be agreed to between the authority and the owner, beginning with the first taxable year of the credit period.

(5) The authority shall not allocate a credit pursuant to this part 21 unless:

(a) The developer of the proposed qualified development has conducted a public hearing in the community in which the proposed qualified development is located concerning the project for which the allocation has been applied. At such hearing, the developer of the proposed qualified development shall specify the total cost of the project, the estimated present value of the allocation, and the estimated total amount of the allocation. Public comments and other information shall be solicited at the hearing. The hearing shall be recorded by the developer of the proposed qualified development and the developer shall make copies of the recording available to interested parties. The authority shall consider any comments or other information provided at the hearing when ranking an application for a credit pursuant to this section.

(b) The authority has obtained a written commitment approved by a public vote of the governing body of a local government to provide some monetary, in-kind, or other contribution benefitting the qualified development.

(6) The allocated credit amount may be taken against the taxes imposed by this article for each taxable year of the credit period. Any amount of credit that exceeds the tax due for a taxable year may be carried forward as a tax credit against subsequent years' income tax liability up to tax year 2012 and shall be applied first to the earliest years possible. Any amount of the credit that is not used shall not be refunded to the taxpayer.

(7) During each calendar year of the two-year period beginning January 1, 2001, and ending December 31, 2002, the authority may allocate a credit, the full amount of which may be claimed against the taxes imposed by this article for each taxable year of the four-year credit period. The aggregate amount of all credits allocated by the authority in each calendar year of the two-year period beginning January 1, 2001, and ending December 31, 2002, shall not exceed the amount of:

(a) Five million dollars for credits allocated pursuant to subsection (1) of this section and section 39-22-2105 combined;

(b) Unallocated credits, if any, for the preceding calendar years; and

(c) Any credit recaptured or otherwise returned to the authority in the calendar year.

(8) Unless otherwise provided in this part 21 or the context clearly requires otherwise, the authority shall determine eligibility for a credit and allocate credits in accordance with the standards and requirements set forth in section 42 of the internal revenue code; however, any combination of federal and state credits allowed shall be the least amount necessary to ensure the financial feasibility of a qualified development.

Source: L. 2000: Entire part added, p. 876, § 1, effective August 2.

39-22-2103. Recapture. (1) As of the last day of any taxable year during the compliance period, if the amount of the qualified basis of a qualified development with respect to a taxpayer is less than the amount of the qualified basis as of the last day of the prior taxable year, then the amount of the taxpayer's state income tax liability for that taxable year shall be increased by the credit recapture amount.

(2) For purposes of subsection (1) of this section, the credit recapture amount is an amount equal to the aggregate decrease in the credit allowed to the taxpayer pursuant to this part 21 for all prior taxable years that would have resulted if the accelerated portion of the credit allowable by reason of this part 21 were not allowed for all prior taxable years with respect to the reduced amount of qualified basis described in subsection (1) of this section.

(3) For purposes of subsection (2) of this section, the accelerated portion of the credit for the prior taxable years with respect to any amount of qualified basis is the difference between:

(a) The aggregate credit allowed pursuant to this part 21, notwithstanding this subsection (3), for the years with respect to such qualified basis; and

(b) The aggregate credit that would be allowable pursuant to this part 21 for such years with respect to the qualified basis if the aggregate credit that would have been allowable, but for this subsection (3), for the entire compliance period were allowable ratably over fifteen years.

(4) In the event that recapture of any credit is required in any tax year, the return submitted for that tax year to the department shall include the proportion of credit required to be recaptured, the identity of each taxpayer subject to the recapture, and the amount of credit previously allocated to such taxpayer.

Source: L. 2000: Entire part added, p. 878, § 1, effective August 2.

39-22-2104. Filing requirements. An owner of a qualified development to which a credit has been allocated and each qualified taxpayer to which such owner has allocated a portion of said credit, if any, shall file with their state income tax return a copy of the allocation certificate issued by the authority with respect to such development and a copy of the owner's certification to the department as to the allocation of the credit among the qualified taxpayers having ownership interests in such development.

Source: L. 2000: Entire part added, p. 879, § 1, effective August 2.

39-22-2105. Parallel credits - insurance premium taxes. (1) Any taxpayer who is subject to the tax on insurance premiums established by sections 10-3-209, 10-5-111, and 10-6-128, C.R.S., and who is therefore exempt from the payment of income tax and who is otherwise eligible to claim a credit pursuant to this part 21 may claim such credit and carry such credit forward against such insurance premium tax to the same extent as the taxpayer would have been able to claim or carry forward such credit or refund against income tax. All other provisions of this part 21 with respect to the credit, including the amount, allocation, and recapture of the credit and the years for which the credit may be claimed shall apply to a credit claimed pursuant to this section.

(2) For purposes of administering this section, any reference in this article to "income tax year" means calendar year.

Source: L. 2000: Entire part added, p. 879, § 1, effective August 2.

39-22-2106. Rules. The authority and the executive director of the department, in consultation with each other, shall promulgate rules necessary for their respective administration of this part 21. Rules of the executive director of the department shall be promulgated in accordance with article 4 of title 24, C.R.S. Rules of the authority shall be adopted pursuant to section 29-4-708, C.R.S.

Source: L. 2000: Entire part added, p. 879, § 1, effective August 2.

39-22-2107. Compliance monitoring. The authority, in consultation with the department, shall monitor and oversee compliance with the provisions of this part 21 and shall report specific occurrences of noncompliance to the department.

Source: L. 2000: Entire part added, p. 879, § 1, effective August 2.

PART 22

PET OVERPOPULATION FUND VOLUNTARY CONTRIBUTION

Editor's note: (1) This part 22 was repealed in 2004 and was subsequently recreated and reenacted in 2004, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this part 22 prior to 2004, consult the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

(2) Prior to this part 22 being recreated and reenacted, § 39-22-2203 (1) provided for the repeal of this part 22, effective January 1, 2004. (See L. 2001, p. 1056.)

39-22-2201. Voluntary contribution designation - procedure. For income tax years commencing on or after January 1, 2010, but prior to January 1, 2020, each Colorado state

individual income tax return form shall contain a line whereby each individual taxpayer may designate the amount of the contribution, if any, the taxpayer wishes to make to the pet overpopulation fund.

Source: **L. 2004:** Entire part RC&RE, p. 1894, § 3, effective June 4. **L. 2007:** Entire section amended, p. 361, § 1, effective August 3. **L. 2010:** Entire section amended, (SB 10-172), ch. 186, p. 671, § 3, effective August 11.

39-22-2202. Contributions credited to the fund - administration - transfer. The department of revenue shall determine annually the total amount designated pursuant to section 39-22-2201 and shall report the amount to the state treasurer, who shall credit such amount to the pet overpopulation fund created in section 35-80-116.5 (5), C.R.S. The general assembly shall appropriate annually from the pet overpopulation fund to the department the department's costs of administering the moneys designated as contributions to the fund. After subtracting the appropriation to the department, all designated moneys in the fund are hereby continuously appropriated for the purposes of this part 22. At the end of each fiscal year, the state treasurer shall transfer all designated moneys in the fund and all interest earned through the investment of fund moneys, after subtracting the appropriation to the department, as specified in section 35-80-116.5 (5) (b), C.R.S.

Source: **L. 2004:** Entire part RC&RE, p. 1895, § 3, effective June 4.

39-22-2203. Repeal of part. This part 22 is repealed, effective January 1, 2021, unless the voluntary contribution to the pet overpopulation fund established by section 39-22-2201 is continued or reestablished by the general assembly acting by bill prior to said date.

Source: **L. 2004:** Entire part RC&RE, p. 1895, § 3, effective June 4. **L. 2005:** Entire section amended, p. 739, § 2, effective August 8. **L. 2007:** Entire section amended, p. 361, § 2, effective August 3. **L. 2010:** Entire section amended, (SB 10-172), ch. 186, p. 672, § 4, effective August 11.

PART 23

COURT-APPOINTED SPECIAL ADVOCATES VOLUNTARY CONTRIBUTION

39-22-2301 to 39-22-2304. (Repealed)

Editor's note: (1) This part 23 was added in 2002. For amendments to this part 23 prior to its repeal in 2009, consult the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

(2) Section 39-22-2304 provided for the repeal of this part 23, effective January 1, 2009. (See L. 2005, p. 966.)

PART 24

COLORADO WATERSHED PROTECTION FUND VOLUNTARY CONTRIBUTION

39-22-2401. Legislative declaration. The general assembly hereby finds and declares that the natural heritage and quality of life in Colorado are of fundamental importance to the citizens of the state, and the protection of this natural heritage and quality of life are essential to sustainable economic development in the state. The general assembly further finds and declares that locally based watershed groups have emerged around the state over

the past decade that are committed to collaborative approaches to the restoration and protection of lands and natural resources within Colorado's watersheds in concert with economic development. The general assembly recognizes that the Colorado watershed assembly, a nonprofit corporation, serves as a state-level umbrella organization for such local groups. The general assembly further recognizes that the citizens of Colorado may be willing to provide funds to assist in the restoration and protection of lands and natural resources within watersheds in the state. It is therefore the intent of the general assembly enacting this part 24 to provide Colorado citizens the opportunity to support local watershed efforts by allowing citizens to make a voluntary contribution on their state income tax returns for such purpose.

Source: L. 2002: Entire part added, p. 1096, § 1, effective August 7.

39-22-2402. Voluntary contribution designation - procedure. For income tax years commencing on or after January 1, 2008, but prior to January 1, 2016, the Colorado state individual income tax return form shall contain a line whereby each individual taxpayer may designate the amount of the contribution, if any, the individual wishes to make to the Colorado healthy rivers fund created in section 39-22-2403.

Source: L. 2002: Entire part added, p. 1097, § 1, effective August 7. **L. 2005:** Entire section amended, p. 666, § 1, effective June 1. **L. 2008:** Entire section amended, p. 1548, § 1, effective August 5. **L. 2011:** Entire section amended, (HB 11-1177), ch. 50, p. 131, § 1, effective August 10.

39-22-2403. Contributions credited to Colorado healthy rivers fund - creation - appropriation. (1) The department of revenue shall determine annually the total amount designated pursuant to section 39-22-2402 and shall report such amount to the state treasurer and to the general assembly. The state treasurer shall credit such amount to the Colorado healthy rivers fund, which fund is hereby created in the state treasury. All interest derived from the deposit and investment of moneys in the fund shall be credited to the fund.

(2) The general assembly shall appropriate annually from the Colorado healthy rivers fund to the department of revenue its costs of administering moneys designated as contributions to the fund. All moneys remaining in the fund at the end of a fiscal year, after subtracting the appropriation to the department, shall be transferred to the Colorado water conservation board in the department of natural resources. Two designees of the board, in cooperation with two designees of the water quality control commission in the department of public health and environment and upon consultation with the Colorado watershed assembly, shall administer the moneys in accordance with the provisions of subsection (3) of this section. Moneys in the fund may be used to cover all reasonable costs incurred in administering the moneys in the fund.

(3) The water quality control commission and the Colorado water conservation board shall use the moneys transferred pursuant to subsection (2) of this section to award grants, on a competitive basis and in a manner to be determined jointly by such commission and board, to any qualified resident of Colorado to work toward the restoration and protection of land and natural resources within watersheds in Colorado. Qualifications for such grants shall be determined jointly by the commission and the board in cooperation with the Colorado watershed assembly.

(4) Moneys granted pursuant to subsection (3) of this section shall not be used for lobbying or for any other political purpose, the costs of litigation, or to remove any diversion or improvement structure.

Source: L. 2002: Entire part added, p. 1097, § 1, effective August 7. **L. 2008:** (1) and (2) amended, p. 1548, § 2, effective August 5.

PART 25

FAMILY RESOURCE CENTERS FUND VOLUNTARY CONTRIBUTION

39-22-2501 to 39-22-2504. (Repealed)

Editor's note: (1) This part 25 was added in 2003. For amendments to this part 25 prior to its repeal in 2010, consult the 2009 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

(2) Section 39-22-2504 provided for the repeal of this part 25, effective January 1, 2010. (See L. 2006, p. 157.)

PART 26

COLORADO STATE FAIR VOLUNTARY CONTRIBUTION

39-22-2601 to 39-22-2604. (Repealed)

Editor's note: (1) This part 26 was added in 2004. For amendments to this part 26 prior to its repeal in 2008, consult the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

(2) Section 39-22-2604 provided for the repeal of this part 26, effective January 1, 2008. (See L. 2004, p. 927.)

PART 27

ORGAN DONOR AWARENESS VOLUNTARY CONTRIBUTION

39-22-2701 to 39-22-2704. (Repealed)

Editor's note: (1) This part 27 was added in 2004. For amendments to this part 27 prior to its repeal in 2011, consult the 2010 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

(2) Section 39-22-2704 provided for the repeal of this part 27, effective January 1, 2011. (See L. 2007, p. 310.)

PART 28

DROPOUT PREVENTION ACTIVITY PROGRAMS
VOLUNTARY CONTRIBUTION**39-22-2801 to 39-22-2804. (Repealed)**

Editor's note: (1) This part 28 was added in 2005 and was not amended prior to its repeal in 2009. For the text of this part 28 prior to 2009, consult the 2008 Colorado Revised Statutes.

(2) Section 39-22-2804 provided for the repeal of this part 28, effective January 1, 2009. (See L. 2005, p. 518.)

PART 29

ALZHEIMER'S ASSOCIATION
VOLUNTARY CONTRIBUTION

Cross references: For the legislative declaration contained in the 2005 act enacting this part 29, see section 1 of chapter 142, Session Laws of Colorado 2005.

39-22-2901. Voluntary contribution designation - procedure. For income tax years that commence on or after January 1, 2011, but before January 1, 2016, the Colorado state

individual income tax return form shall contain a line whereby each individual taxpayer may designate the amount of the contribution, if any, the individual wishes to make to the Alzheimer's Association fund created in section 39-22-2902.

Source: **L. 2005:** Entire part added, p. 496, § 2, effective May 12. **L. 2008:** Entire section amended, p. 52, § 2, effective August 5. **L. 2011:** Entire section amended, (HB 11-1028), ch. 16, p. 44, § 2, effective August 10.

Cross references: (1) For the legislative declaration in the 2008 act amending this section, see section 1 of chapter 24, Session Laws of Colorado 2008.

(2) For the legislative declaration in the 2011 act amending this section, see section 1 of chapter 16, Session Laws of Colorado 2011.

39-22-2902. Contributions credited to the Alzheimer's Association fund - creation - appropriation. (1) The department of revenue shall determine annually the total amount designated pursuant to section 39-22-2901 and shall report such amount to the state treasurer and to the general assembly. The state treasurer shall credit such amount to the Alzheimer's Association fund, which fund is hereby created in the state treasury. All interest derived from the deposit and investment of moneys in the fund shall be credited to the fund.

(2) The general assembly shall appropriate annually from the Alzheimer's Association fund to the department of revenue its costs of administering moneys designated as contributions to the fund. All moneys remaining in the fund at the end of a fiscal year, after subtracting the appropriation to the department, shall be transferred to the Alzheimer's Association Colorado chapter, a Colorado nonprofit agency. The Alzheimer's Association Colorado chapter shall administer such moneys in furtherance of the work of the association in providing family support services and caregiver education.

Source: **L. 2005:** Entire part added, p. 496, § 2, effective May 12.

39-22-2903. Repeal of part. This part 29 is repealed, effective January 1, 2017, unless the voluntary contribution to the Alzheimer's Association fund established by section 39-22-2902 is continued or reestablished by the general assembly acting by bill prior to said date.

Source: **L. 2005:** Entire part added, p. 496, § 2, effective May 12. **L. 2008:** Entire section amended, p. 52, § 3, effective August 5. **L. 2011:** Entire section amended, (HB 11-1028), ch. 16, p. 44, § 3, effective August 10.

Cross references: (1) For the legislative declaration in the 2008 act amending this section, see section 1 of chapter 24, Session Laws of Colorado 2008.

(2) For the legislative declaration in the 2011 act amending this section, see section 1 of chapter 16, Session Laws of Colorado 2011.

PART 30

MILITARY FAMILY RELIEF VOLUNTARY CONTRIBUTION

39-22-3001. Voluntary contribution designation - procedure. For income tax years commencing on or after January 1, 2011, but prior to January 1, 2016, the Colorado state individual income tax return form shall contain a line whereby each individual taxpayer may designate the amount of the contribution, if any, the individual wishes to make to the military family relief fund created in section 28-3-1502, C.R.S.

Source: **L. 2005:** Entire part added, p. 654, § 2, effective May 27. **L. 2008:** Entire section amended, p. 54, § 1, effective August 5. **L. 2011:** Entire section amended, (HB 11-1037), ch. 7, p. 14, § 1, effective August 10.

39-22-3002. Contributions credited to the military family relief fund - appropriation. (1) The department of revenue shall determine annually the total amount designated pursuant to section 39-22-3001 and shall report such amount to the state treasurer, the adjutant general, and the house and senate state, veterans and military affairs committees. The state treasurer shall credit such amount to the military family relief fund.

(2) The general assembly shall appropriate annually from the military family relief fund to the department of revenue its costs of administering moneys designated as contributions to the fund.

Source: L. 2005: Entire part added, p. 654, § 2, effective May 27.

39-22-3003. Repeal of part. This part 30 is repealed, effective January 1, 2017, unless the voluntary contribution to the military family relief fund is continued or reestablished by the general assembly acting by bill prior to said date.

Source: L. 2005: Entire part added, p. 654, § 2, effective May 27. **L. 2008:** Entire section amended, p. 54, § 2, effective August 5. **L. 2011:** Entire section amended, (HB 11-1037), ch. 7, p. 14, § 2, effective August 10.

PART 31

COLORADO EASTER SEALS VOLUNTARY CONTRIBUTION

39-22-3101. Legislative declaration. The general assembly hereby finds and declares that the quality of life for individuals with disabilities and special needs, and their families, is of fundamental importance to the citizens of the state. The general assembly further declares that as many as fifty-four million Americans nationwide have a disability. The general assembly recognizes that there are many costs associated with the care, physical rehabilitation, and job training for individuals with disabilities or special needs and that Easter Seals is an organization that offers a variety of services to help people with disabilities address life's challenges, achieve personal goals, and develop greater independence. The general assembly further recognizes that many Colorado citizens would be willing to provide funds for Easter Seals programs if given the opportunity. It is therefore the intent of the general assembly in enacting this part 31 to provide those committed and concerned Colorado citizens the opportunity to financially foster the growth and success of Easter Seals by allowing citizens to make voluntary contributions on their state income tax returns for such purpose.

Source: L. 2006: Entire part added, p. 824, § 1, effective August 7.

39-22-3102. Voluntary contribution designation - procedure. For income tax years commencing on or after January 1, 2009, but prior to January 1, 2012, the Colorado state individual income tax return form shall contain a line whereby each individual taxpayer may designate the amount of the contribution, if any, the individual wishes to make to the Easter Seals Colorado disability fund created in section 39-22-3103.

Source: L. 2006: Entire part added, p. 825, § 1, effective August 7. **L. 2009:** Entire section amended, (HB 09-1050), ch. 241, p. 147, § 1, effective August 5.

39-22-3103. Contributions credited to the Easter Seals Colorado disability fund - creation - appropriation. (1) The department of revenue shall determine annually the total amount designated pursuant to section 39-22-3102 and shall report that amount to the state treasurer and to the general assembly. The state treasurer shall credit that amount to the Easter Seals Colorado disability fund, which fund is hereby created in the state treasury. All

interest derived from the deposit and investment of moneys in the fund shall be credited to the fund.

(2) The general assembly shall appropriate annually from the Easter Seals Colorado disability fund to the department of revenue its costs of administering moneys designated as contributions to the fund. All moneys remaining in the fund at the end of a fiscal year, after subtracting the appropriation to the department, shall be transferred to Easter Seals Colorado, a Colorado nonprofit organization. Easter Seals Colorado shall administer the moneys in furtherance of the work of Easter Seals statewide.

Source: L. 2006: Entire part added, p. 825, § 1, effective August 7. **L. 2009:** Entire section amended, (HB 09-1050), ch. 241, p. 147, § 2, effective August 5.

39-22-3104. Repeal of part. This part 31 is repealed, effective January 1, 2013, unless the voluntary contribution to the Easter Seals Colorado disability fund is continued or reestablished by the general assembly acting by bill prior to said date.

Source: L. 2006: Entire part added, p. 825, § 1, effective August 7. **L. 2009:** Entire section amended, (HB 09-1050), ch. 241, p. 148, § 3, effective August 5.

PART 32

NATIONAL MULTIPLE SCLEROSIS SOCIETY VOLUNTARY CONTRIBUTION

39-22-3201. Legislative declaration. The general assembly hereby finds and declares that the quality of life for individuals with multiple sclerosis, and their families, is of fundamental importance to the citizens of the state. The general assembly further declares that the state has one of the highest prevalence rates for multiple sclerosis in the United States: One in five hundred and eighty citizens, of which seventy-three percent are women. The general assembly recognizes that there are many costs associated with the care of individuals with multiple sclerosis because it is a disease that starts in young adulthood and usually becomes progressively disabling, thereby significantly impacting people's lives for many years. The general assembly further declares that the Colorado chapter of the National Multiple Sclerosis Society was founded in 1959 and provides programs and services across the state for people with multiple sclerosis, their families, and friends. The general assembly recognizes that the National Multiple Sclerosis Society funds research in Colorado toward finding the cause of and cure for multiple sclerosis. The general assembly further recognizes that the Colorado chapter of the National Multiple Sclerosis Society has regional offices in the Denver metro area, Fort Collins, Grand Junction, and Colorado Springs. The general assembly further recognizes that many Colorado citizens would be willing to provide funds for multiple sclerosis programs if given the opportunity. It is therefore the intent of the general assembly in enacting this part 32 to provide those committed and concerned Colorado citizens the opportunity to financially foster the growth and success of the National Multiple Sclerosis Society by allowing citizens to make voluntary contributions on their state income tax returns for such purpose.

Source: L. 2006: Entire part added, p. 828, § 1, effective August 7.

39-22-3202. Voluntary contribution designation - procedure. For the five consecutive income tax years immediately following the year in which the executive director files written certification with the revisor of statutes as specified in section 39-22-1001 (8) that a line has become available and the Colorado multiple sclerosis fund voluntary contribution is next in the queue, the Colorado state individual income tax return form shall contain a line whereby each individual taxpayer may designate the amount of the contribution, if any, the individual wishes to make to the Colorado multiple sclerosis fund created in section 39-22-3203.

Source: L. 2006: Entire part added, p. 829, § 1, effective August 7. **L. 2009:** Entire section amended, (SB 09-126), ch. 213, p. 967, § 1, effective August 5. **L. 2011:** Entire section amended, (HB 11-1295), ch. 245, p. 1071, § 2, effective May 27.

Editor's note: As of the publication date, the revisor of statutes had not received the notice specified in this section.

39-22-3203. Contributions credited to the Colorado multiple sclerosis fund - creation - appropriation. (1) The department of revenue shall determine annually the total amount designated pursuant to section 39-22-3202 and shall report that amount to the state treasurer and to the general assembly. The state treasurer shall credit that amount to the Colorado multiple sclerosis fund, which fund is hereby created in the state treasury. All interest derived from the deposit and investment of moneys in the fund shall be credited to the fund.

(2) The general assembly shall appropriate annually from the Colorado multiple sclerosis fund to the department of revenue its costs of administering moneys designated as contributions to the fund. All moneys remaining in the fund at the end of a fiscal year, after subtracting the appropriation to the department, shall be transferred to the National Multiple Sclerosis Society, Colorado chapter, a Colorado nonprofit organization. The National Multiple Sclerosis Society, Colorado chapter, shall administer the moneys in furtherance of the work of the National Multiple Sclerosis Society statewide.

Source: L. 2006: Entire part added, p. 829, § 1, effective August 7. **L. 2011:** Entire section amended, (HB 11-1295), ch. 245, p. 1071, § 3, effective May 27.

39-22-3204. Repeal of part. This part 32 is repealed, effective January 1 of the sixth income tax year following the year in which the executive director files written certification with the revisor of statutes as specified in section 39-22-1001 (8) that a line has become available and the Colorado multiple sclerosis fund voluntary contribution is next in the queue, unless the voluntary contribution to the Colorado multiple sclerosis fund established by section 39-22-3203 is continued or reestablished by the general assembly acting by bill prior to said date.

Source: L. 2006: Entire part added, p. 829, § 1, effective August 7. **L. 2009:** Entire section amended, (SB 09-126), ch. 213, p. 967, § 2, effective August 5. **L. 2011:** Entire section amended, (HB 11-1295), ch. 245, p. 1072, § 4, effective May 27.

Editor's note: As of the publication date, the revisor of statutes had not received the notice specified in this section.

PART 33

COLORADO CANCER FUND VOLUNTARY CONTRIBUTION

39-22-3301. Legislative declaration. (1) The general assembly hereby finds and declares that the eradication of all cancers is essential to the quality of life of Coloradans. The general assembly recognizes that the mission of the Colorado Cancer Coalition is to bring together and coordinate cancer prevention, early detection, treatment support, and research efforts to improve the quality of life of every person in Colorado.

(2) The general assembly further finds and declares that the Colorado Cancer Coalition is a network of organizations and individuals that provide leadership and coordination of services for cancer patients and their families. The general assembly further finds and declares that the coalition serves as a catalyst for cancer prevention and control activities throughout the state. The general assembly further recognizes that the coalition partners

with many organizations that strive to ensure that adequate prevention, early detection, treatment, and survivorship care are available and accessible to all Coloradans.

(3) The general assembly further finds and declares that cancer affects not only those who are diagnosed but also their families, friends, communities, and places of work. Education, awareness, and personal advocacy are essential to the eradication of all cancers. The general assembly further finds and declares that the Colorado Cancer Coalition strives to achieve the goals and objectives set forth in the coalition's Colorado cancer plan throughout the state, which are integral in addressing the needs of cancer patients, survivors, and health care providers.

(4) In order to assist the Colorado Cancer Coalition in fulfilling its mission, the general assembly recognizes that the citizens of Colorado may be willing to provide moneys to assist in the coalition's education, personal advocacy, treatment, and health promotion efforts. The general assembly further recognizes that the Colorado cancer fund advisory board, consisting of appropriate members and partners of the Colorado Cancer Coalition, will be established to ensure moneys are distributed in a fair and equitable manner. It is therefore the intent of the general assembly to provide Colorado citizens the opportunity to support the efforts of the Colorado Cancer Coalition and its partners by allowing citizens to make a voluntary contribution on their state income tax returns for such purpose.

Source: L. 2007: Entire part added, p. 1500, § 1, effective September 1. L. 2012: Entire part amended, (HB 12-1104), ch. 63, p. 224, § 1, effective August 8.

39-22-3302. Voluntary contribution designation - procedure. For income tax years commencing on or after January 1, 2012, but prior to January 1, 2017, the Colorado state individual income tax return form shall contain a line whereby each individual taxpayer may designate the amount of the contribution, if any, the individual wishes to make to the Colorado cancer fund created in section 39-22-3303.

Source: L. 2007: Entire part added, p. 1501, § 1, effective September 1. L. 2010: Entire section amended, (SB 10-172), ch. 186, p. 672, § 5, effective August 11. L. 2012: Entire part amended, (HB 12-1104), ch. 63, p. 225, § 1, effective August 8.

39-22-3303. Contributions credited to the Colorado cancer fund - creation - appropriation. (1) The department of revenue shall determine annually the total amount designated pursuant to section 39-22-3302 and shall report that amount to the state treasurer and to the general assembly. The state treasurer shall credit that amount to the Colorado cancer fund, which fund is hereby created in the state treasury. All interest derived from the deposit and investment of moneys in the fund shall be credited to the fund.

(2) The general assembly shall appropriate annually from the Colorado cancer fund to the department of revenue its costs of administering moneys designated as contributions to the fund. All moneys remaining in the fund at the end of a fiscal year, after subtracting the appropriation to the department, shall be transferred to the Colorado Cancer Coalition, an organization under the direction of the Colorado Foundation for Public Health and the Environment, a Colorado nonprofit organization. The coalition shall administer the moneys in furtherance of its work on behalf of the cancer community.

Source: L. 2007: Entire part added, p. 1501, § 1, effective September 1. L. 2012: Entire part amended, (HB 12-1104), ch. 63, p. 225, § 1, effective August 8.

39-22-3304. Repeal of part. This part 33 is repealed, effective January 1, 2018, unless the voluntary contribution to the Colorado cancer fund established by section 39-22-3303 is continued or reestablished by the general assembly acting by bill prior to said date.

Source: L. 2007: Entire part added, p. 1502, § 1, effective September 1. L. 2010: Entire section amended, (SB 10-172), ch. 186, p. 672, § 6, effective August 11. L. 2012: Entire part amended, (HB 12-1104), ch. 63, p. 226, § 1, effective August 8.

PART 34

9HEALTH FAIR VOLUNTARY CONTRIBUTION

Editor's note: Pursuant to section 39-22-1001 (8)(b), the executive director of the department of revenue certified to the revisor of statutes on December 5, 2011, that the 9Health Fair fund voluntary contribution created in this part 34, as it existed prior to 2012, did not meet the level of contributions required to remain on the state income tax return form and was therefore excluded from the form beginning January 1, 2012. In 2012, section 39-22-3402 was amended to place the 9Health Fair fund voluntary contribution in the queue created by section 39-22-1001 (8).

39-22-3401. Legislative declaration. (1) The general assembly hereby finds and declares that 9Health Fair, a nonprofit entity, offers free and low-cost health screenings and education through volunteer-run, community-initiated programs and provides needed services for thousands of people in Colorado. The general assembly further finds that, for some people, their only contact with a health care professional is at a 9Health Fair location, and 9Health Fair provides free vouchers to those who could not otherwise afford important health screenings. 9Health Fair's mission is to promote health awareness and to encourage individuals to assume responsibility for their own health. The general assembly further finds that 9Health Fair impacts lives and communities, identifying thousands of previously undetected health issues each year, and contributes to improvement in the health of the state's population. Eighty-seven thousand individuals participated in the 2007 9Health Fair at over one hundred sixty locations in fifty counties. Since 1980, with the help of volunteer forces from religious institutions, schools, recreation centers, service organizations, and hospitals and with the support of the Colorado national guard, 9Health Fair has directly impacted over one and a half million lives.

(2) In order to assist 9Health Fair in fulfilling its mission, the general assembly recognizes that the citizens of Colorado may be willing to provide moneys to assist in 9Health Fair's health promotion efforts. It is therefore the intent of the general assembly to provide Colorado citizens the opportunity to support the efforts of 9Health Fair by allowing citizens to make a voluntary contribution on their state income tax returns for such purpose.

Source: L. 2008: Entire part added, p. 591, § 1, effective August 5.

39-22-3402. Voluntary contribution designation - procedure. For the five consecutive income tax years immediately following the year in which the executive director files written certification with the revisor of statutes as specified in section 39-22-1001 (8) that a line has become available and the 9Health Fair fund voluntary contribution is next in the queue, the Colorado state individual income tax return form shall contain a line whereby each individual taxpayer may designate the amount of the contribution, if any, the individual wishes to make to the 9Health Fair fund created in section 39-22-3403.

Source: L. 2008: Entire part added, p. 592, § 1, effective August 5. **L. 2011:** Entire section amended, (SB 11-081), ch. 108, p. 336, § 1, effective August 10. **L. 2012:** Entire section amended, (SB 12-055), ch. 119, p. 406, § 2, effective August 8.

39-22-3403. Contributions credited to the 9Health Fair fund - creation - appropriation. (1) The department of revenue shall determine annually the total amount designated pursuant to section 39-22-3402 and shall report that amount to the state treasurer and to the general assembly. The state treasurer shall credit that amount to the 9Health Fair fund, which fund is hereby created in the state treasury. All interest derived from the deposit and investment of moneys in the fund shall be credited to the fund.

(2) The general assembly shall appropriate annually from the 9Health Fair fund to the department of revenue its costs of administering moneys designated as contributions to the fund. All moneys remaining in the fund at the end of a fiscal year, after subtracting the appropriation to the department, shall be transferred to 9Health Fair, a Colorado nonprofit organization.

Source: L. 2008: Entire part added, p. 592, § 1, effective August 5.

39-22-3404. Repeal of part. This part 34 is repealed, effective January 1 of the sixth income tax year following the year in which the executive director files written certification with the revisor of statutes as specified in section 39-22-1001 (8) that a line has become available and the 9Health Fair fund voluntary contribution is next in the queue, unless the voluntary contribution to the 9Health Fair fund established by section 39-22-3403 is continued or reestablished by the general assembly acting by bill prior to said date.

Source: **L. 2008:** Entire part added, p. 592, § 1, effective August 5. **L. 2011:** Entire section amended, (SB 11-081), ch. 108, p. 336, § 2, effective August 10. **L. 2012:** Entire section amended, (SB 12-055), ch. 119, p. 406, § 3, effective August 8.

PART 35

ADULT STEM CELLS CURE FUND VOLUNTARY CONTRIBUTION

Editor's note: Pursuant to section 39-22-1001 (8)(b), the executive director of the department of revenue certified to the revisor of statutes on December 5, 2011, that the adult stem cells cure fund created in this part 35 did not meet the level of contributions required to remain on the state income tax return form and was therefore excluded from the form beginning January 1, 2012.

39-22-3501. Voluntary contribution designation - procedure. For income tax years commencing on or after January 1, 2011, but before January 1, 2016, the Colorado state individual income tax return form shall contain a line whereby each individual taxpayer may designate the amount of the contribution, if any, the individual wishes to make to the adult stem cells cure fund created in section 25-40-103, C.R.S.

Source: **L. 2008:** Entire part added, p. 2072, § 2, effective June 3. **L. 2011:** Entire section amended, (SB 11-272), ch. 287, p. 1336, § 1, effective August 10.

39-22-3502. Contributions credited to the adult stem cells cure fund - appropriation. (1) The department of revenue shall determine annually the total amount designated pursuant to section 39-22-3501 and shall report that amount to the state treasurer and to the general assembly. The state treasurer shall credit that amount to the adult stem cells cure fund.

(2) The general assembly shall appropriate from the adult stem cells cure fund, to the department of revenue, the department of revenue's costs of implementing this part 35.

Source: **L. 2008:** Entire part added, p. 2072, § 2, effective June 3.

39-22-3503. Repeal of part. This part 35 is repealed, effective January 1, 2017, unless the voluntary contribution to the adult stem cells cure fund as specified in section 39-22-3501 is continued or reestablished by the general assembly, acting by bill, prior to said date.

Source: **L. 2008:** Entire part added, p. 2072, § 2, effective June 3. **L. 2011:** Entire section amended, (SB 11-272), ch. 287, p. 1336, § 2, effective August 10.

PART 36

MAKE-A-WISH FOUNDATION OF COLORADO VOLUNTARY CONTRIBUTION

39-22-3601. Legislative declaration. (1) The general assembly hereby finds and declares that the Make-A-Wish Foundation of Colorado, a nonprofit entity, grants the wishes of children with life-threatening medical conditions to enrich the human experience

with hope, strength, and joy. The general assembly further finds that the Make-A-Wish Foundation of Colorado will consider the wish of any child diagnosed with a life-threatening medical condition who is between the ages of two and a half and eighteen and lives anywhere in the state. The general assembly further finds that the Make-A-Wish Foundation of Colorado uses volunteers who meet with an eligible child and his or her family to determine the child's truest wish, and the entire family participates in the child's wish. The general assembly further finds that a child's wish provides joy, respite, and family healing and provides relief from the child's illness. The general assembly further finds that the happiness the Make-A-Wish Foundation of Colorado provides by granting wishes gets whole families out of hospitals and offers them a time of fun and togetherness. The general assembly further finds that the average cost of granting a wish is six thousand dollars, although some wishes cost much less, and some cost much more, and the Make-A-Wish Foundation of Colorado relies on in-kind gifts and donations from individuals, groups, and corporations as well as the generous donation of time from many volunteers.

(2) In order to assist the Make-A-Wish Foundation of Colorado in fulfilling its mission, the general assembly recognizes that many citizens of Colorado may be willing to provide moneys to assist in the Make-A-Wish Foundation of Colorado's efforts. It is therefore the intent of the general assembly to provide Colorado citizens the opportunity to support the efforts of the Make-A-Wish Foundation of Colorado by allowing citizens to make a voluntary contribution on their state income tax returns for such purpose.

Source: L. 2009: Entire part added, (HB 09-1043), ch. 394, p. 2125, § 1, effective August 5.

39-22-3602. Voluntary contribution designation - procedure. For income tax years commencing on or after January 1, 2012, but prior to January 1, 2017, the Colorado state individual income tax return form shall contain a line whereby each individual taxpayer may designate the amount of the contribution, if any, the individual wishes to make to the Make-A-Wish Foundation of Colorado fund created in section 39-22-3603 (1).

Source: L. 2009: Entire part added, (HB 09-1043), ch. 394, p. 2126, § 1, effective August 5. **L. 2012:** Entire section amended, (HB 12-1096), ch. 36, p. 132, § 1, effective March 19.

39-22-3603. Contributions credited to the Make-A-Wish Foundation of Colorado fund - creation - appropriation. (1) The department of revenue shall determine annually the total amount designated pursuant to section 39-22-3602 and shall report that amount to the state treasurer and to the general assembly. The state treasurer shall credit that amount to the Make-A-Wish Foundation of Colorado fund, which fund is hereby created in the state treasury. All interest derived from the deposit and investment of moneys in the fund shall be credited to the fund.

(2) The general assembly shall appropriate annually from the Make-A-Wish Foundation of Colorado fund to the department of revenue its costs of administering moneys designated as contributions to the fund. All moneys remaining in the fund at the end of a fiscal year, after subtracting the appropriation to the department, shall be transferred to the Make-A-Wish Foundation of Colorado, a Colorado nonprofit organization.

Source: L. 2009: Entire part added, (HB 09-1043), ch. 394, p. 2126, § 1, effective August 5.

39-22-3604. Repeal of part. This part 36 is repealed, effective January 1, 2018, unless the voluntary contribution to the Make-A-Wish Foundation of Colorado fund established by section 39-22-3602 is continued or reestablished by the general assembly acting by bill prior to that date.

Source: L. 2009: Entire part added, (HB 09-1043), ch. 394, p. 2126, § 1, effective August 5. **L. 2012:** Entire section amended, (HB 12-1096), ch. 36, p. 132, § 2, effective March 19.

PART 37

COLORADO 2-1-1 FIRST CALL FOR HELP FUND
VOLUNTARY CONTRIBUTION

39-22-3701. Legislative declaration. (1) The general assembly hereby finds and declares that 2-1-1 Colorado is a public service collaborative of several organizations and that Mile High United Way is the official fiscal manager for the collaborative. The general assembly further finds and declares that 2-1-1 Colorado:

(a) Especially in times of economic need, provides a valuable service to Colorado citizens searching for assistance;

(b) Provides streamlined access to existing health and human services information and eliminates confusing and frustrating searches;

(c) Provides emergency response to natural disasters so as not to overload other public systems;

(d) Provides elderly, disabled, non-English speaking, illiterate, and new Colorado citizens and those incapacitated by crisis the opportunity to help themselves;

(e) Expands civic involvement and provides a forum for matching volunteers and donors with community organizations that need their help; and

(f) Provides an effective social barometer for assessing where need is greatest in the community.

(2) In order to assist 2-1-1 Colorado in fulfilling its mission, the general assembly recognizes that many citizens of Colorado may be willing to provide moneys to assist in 2-1-1 Colorado's efforts. It is therefore the intent of the general assembly to provide Coloradans the opportunity to support the efforts of 2-1-1 Colorado by allowing citizens to make a voluntary contribution on their state income tax returns to the Colorado 2-1-1 first call for help fund for such purpose.

Source: L. 2010: Entire part added, (HB 10-1073), ch. 347, p. 1603, § 1, effective August 11.

39-22-3702. Voluntary contribution designation - procedure. For income tax years commencing on or after January 1, 2010, but prior to January 1, 2020, the Colorado state individual income tax return form shall contain a line whereby each individual taxpayer may designate the amount of the contribution, if any, the individual wishes to make to the Colorado 2-1-1 first call for help fund created in section 39-22-3703 (1).

Source: L. 2010: Entire part added, (HB 10-1073), ch. 347, p. 1604, § 1, effective August 11.

39-22-3703. Contributions credited to the Colorado 2-1-1 first call for help fund - creation - appropriation. (1) The department of revenue shall determine annually the total amount designated pursuant to section 39-22-3702 and shall report that amount to the state treasurer and to the general assembly. The state treasurer shall credit that amount to the Colorado 2-1-1 first call for help fund, which fund is hereby created in the state treasury. All interest derived from the deposit and investment of moneys in the fund shall be credited to the fund.

(2) The general assembly shall appropriate annually from the Colorado 2-1-1 first call for help fund to the department of revenue its costs of administering moneys designated as contributions to the fund. All moneys remaining in the fund at the end of the fiscal year, after subtracting the appropriation to the department, shall be transferred to Mile High United Way, a nonprofit organization, solely for use in operating 2-1-1 Colorado.

Source: L. 2010: Entire part added, (HB 10-1073), ch. 347, p. 1604, § 1, effective August 11.

39-22-3704. Repeal of part. This part 37 is repealed, effective January 1, 2021, unless the voluntary contribution to the Colorado 2-1-1 first call for help fund established by this part 37 is continued or reestablished by the general assembly acting by bill prior to said date.

Source: L. 2010: Entire part added, (HB 10-1073), ch. 347, p. 1604, § 1, effective August 11.

PART 38

UNWANTED HORSE FUND VOLUNTARY CONTRIBUTION

39-22-3801. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) Horses are a cherished part of our western heritage and an important aspect of Colorado's culture and economy;

(b) Colorado is facing a growing threat of an increasing number of unwanted horses;

(c) Approximately six thousand horses become unwanted in Colorado each year;

(d) Most of Colorado's horse rescue facilities are operating at capacity and, as such, their ability to care for additional unwanted horses is limited;

(e) Documented incidences of horse abuse and neglect are rising; and

(f) The Colorado unwanted horse alliance, a registered nonprofit organization pursuant to section 501 (c) (3) of the internal revenue code, exists to help find solutions to the problem.

(2) In order to assist the Colorado unwanted horse alliance in fulfilling its mission, the general assembly recognizes that many citizens of Colorado may be willing to provide moneys to assist in its efforts. It is therefore the intent of the general assembly to provide Coloradans the opportunity to support the efforts of the Colorado unwanted horse alliance by allowing citizens to make a voluntary contribution on their state income tax returns to the unwanted horse fund for such purpose.

Source: L. 2010: Entire part added, (SB 10-139), ch. 305, p. 1440, § 1, effective August 11.

39-22-3802. Voluntary contribution designation - procedure - effective date. (1) For the three consecutive income tax years immediately following the year in which the executive director files written certification with the revisor of statutes as specified in subsection (2) of this section, the Colorado state individual income tax return form shall contain a line whereby each individual taxpayer may designate the amount of the contribution, if any, the individual wishes to make to the unwanted horse fund created in section 39-22-3803 (1).

(2) This part 38 shall take effect on September 1 of the year in which the executive director of the department of revenue files a written certification with the revisor of statutes that there are no more than fourteen other lines on the Colorado state individual income tax return form for voluntary contributions for the state income tax year commencing in January of the following year.

Source: L. 2010: Entire part added, (SB 10-139), ch. 305, p. 1441, § 1, effective August 11.

Editor's note: The executive director of the department of revenue filed written certification with the revisor of statutes pursuant to subsection (2) on March 6, 2012.

39-22-3803. Contributions credited to the unwanted horse fund - creation - appropriation. (1) The department of revenue shall determine annually the total amount designated pursuant to section 39-22-3802 and shall report that amount to the state treasurer and to the general assembly. The state treasurer shall credit that amount to the unwanted horse fund, which fund is hereby created in the state treasury. All interest derived from the deposit and investment of moneys in the fund shall be credited to the fund.

(2) The general assembly shall appropriate annually from the unwanted horse fund to the department of revenue its costs of administering moneys designated as contributions to the fund. All moneys remaining in the fund at the end of the fiscal year, after subtracting the appropriation to the department, shall be transferred to the Colorado unwanted horse alliance, a registered nonprofit organization pursuant to section 501 (c) (3) of the internal revenue code.

Source: L. 2010: Entire part added, (SB 10-139), ch. 305, p. 1441, § 1, effective August 11.

39-22-3804. Repeal of part. This part 38 is repealed, effective January 1 of the fourth income tax year following the year in which the executive director files written certification with the revisor of statutes as specified in section 39-22-3802 (2), unless the voluntary contribution to the unwanted horse fund established by this part 38 is continued or reestablished by the general assembly acting by bill prior to said date.

Source: L. 2010: Entire part added, (SB 10-139), ch. 305, p. 1441, § 1, effective August 11.

Editor's note: The executive director of the department of revenue filed written certification with the revisor of statutes pursuant to section 39-22-3802 (2) on March 6, 2012.

PART 39

GOODWILL INDUSTRIES VOLUNTARY CONTRIBUTION

39-22-3901. Legislative declaration. (1) The general assembly hereby finds and declares that Goodwill - Colorado is a public service collaborative of Goodwill Industries of Denver and Goodwill Industries of Colorado Springs and that Goodwill - Colorado:

(a) Especially in times of economic need, provides valuable opportunities for Colorado citizens to develop critical workforce skills, find employment, and advance their careers;

(b) Helps Colorado citizens with disabilities or disadvantaging work conditions to reach their highest level of personal and economic independence through job training and workforce development programs;

(c) Offers career development programs, mentoring, and internship opportunities to thousands of at-risk youth in Colorado;

(d) Makes available low-cost clothing and household items to Colorado citizens in thirty retail stores that also create new jobs and generate sales tax revenue for local communities and the state; and

(e) Annually recycles tens of millions of pounds of clothing and household items, keeping these items out of Colorado's landfills.

(2) In order to assist Goodwill - Colorado, a collaboration of Goodwill Industries of Colorado Springs and Goodwill Industries of Denver, which are both registered nonprofit

organizations pursuant to section 501 (c) (3) of the internal revenue code, in fulfilling its mission, the general assembly recognizes that many citizens of Colorado may be willing to provide moneys to assist in its efforts. It is therefore the intent of the general assembly to provide Coloradans the opportunity to support the efforts of Goodwill Industries of Colorado Springs by allowing citizens to make a voluntary contribution on their state income tax return form to the Goodwill Industries fund for such a purpose.

Source: L. 2011: Entire part added, (HB 11-1097), ch. 140, p. 486, § 2, effective August 10.

39-22-3902. Voluntary contribution designation - procedure - effective date. For the five consecutive income tax years immediately following the year in which the executive director files written certification with the revisor of statutes as specified in section 39-22-1001 (8) (b), the Colorado state individual income tax return form shall contain a line whereby each individual taxpayer may designate the amount of the contribution, if any, the individual wishes to make to the Goodwill Industries fund created in section 39-22-3903 (1).

Source: L. 2011: Entire part added, (HB 11-1097), ch. 140, p. 487, § 2, effective August 10.

Editor's note: Pursuant to section 39-22-1001 (8)(b), the executive director of the department of revenue certified to the revisor of statutes on December 5, 2011, that the voluntary contribution for the Goodwill Industries fund was added to the state income tax return form beginning January 1, 2012.

39-22-3903. Contributions credited to the Goodwill Industries fund - creation - appropriation. (1) The department of revenue shall determine annually the total amount designated pursuant to section 39-22-3902 and shall report that amount to the state treasurer and to the general assembly. The state treasurer shall credit that amount to the Goodwill Industries fund, which fund is hereby created in the state treasury. All interest derived from the deposit and investment of moneys in the fund shall be credited to the fund.

(2) The general assembly shall appropriate annually from the Goodwill Industries fund to the department of revenue its costs of administering moneys designated as contributions to the fund. All moneys remaining in the fund at the end of the fiscal year, after subtracting the appropriation to the department, shall be transferred to Goodwill - Colorado.

Source: L. 2011: Entire part added, (HB 11-1097), ch. 140, p. 487, § 2, effective August 10.

39-22-3904. Repeal of part. This part 39 is repealed, effective January 1 of the sixth income tax year following the year in which the executive director files written certification with the revisor of statutes as specified in section 39-22-1001 (8) (b), unless the voluntary contribution to the Goodwill Industries fund established by this part 39 is continued or reestablished by the general assembly acting by bill prior to said date.

Source: L. 2011: Entire part added, (HB 11-1097), ch. 140, p. 487, § 2, effective August 10.

Editor's note: Pursuant to section 39-22-1001 (8)(b), the executive director of the department of revenue certified to the revisor of statutes on December 5, 2011, that the voluntary contribution for the Goodwill Industries fund was added to the state income tax return form beginning January 1, 2012.

PART 40

ROUNDUP RIVER RANCH
VOLUNTARY CONTRIBUTION

39-22-4001. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) There are over thirty-four thousand children between the ages of seven and seventeen suffering from serious diseases and medical conditions in the Rocky Mountain region;

(b) Eighty-six percent of these children are unable to attend a camp because there is not a children's camp that can accommodate serious medical conditions in the Rocky Mountain region;

(c) Roundup River Ranch is a Colorado 501 (c) (3) nonprofit organization that has completed a twenty-million-dollar capital campaign and is constructing a state-of-the-art children's camp in Eagle county, Colorado, to accommodate children with serious medical conditions;

(d) Roundup River Ranch is a member of the Association of Hole in the Wall Camps, the world's largest family of children's medical specialty camps;

(e) Beginning in 2011, Roundup River Ranch will provide free, year-round programs to children between the ages of seven and seventeen years who suffer from a wide variety of life-threatening illnesses, including, but not limited to, asthma, blood disorders, cancer, diabetes, solid organ transplants, and other serious medical conditions;

(f) The camp will annually accommodate seven hundred fifty children suffering from serious medical conditions;

(g) Roundup River Ranch has the capacity and strategic plan to expand to annually accommodate one thousand five hundred campers; and

(h) Roundup River Ranch will provide positive recreational experiences for children with serious illnesses in an environment where the children are understood, accepted, and cared for. Juvenile-oriented health camps have proven to reduce anxiety and depression related to illness and lower annual medical costs.

(2) In order to assist the Roundup River Ranch in fulfilling its mission, the general assembly recognizes that many citizens of Colorado may be willing to provide moneys to assist in its efforts. It is therefore the intent of the general assembly to provide Coloradans the opportunity to support the efforts of Roundup River Ranch by allowing citizens to make a voluntary contribution on their state income tax return form to the Roundup River Ranch fund for such a purpose.

Source: L. 2011: Entire part added, (HB 11-1071), ch. 294, p. 1396, § 2, effective August 10.

39-22-4002. Voluntary contribution designation - procedure - effective date. For the five consecutive income tax years immediately following the year in which the executive director files written certification with the revisor of statutes as specified in section 39-22-1001 (8) that a line has become available and the Roundup River Ranch voluntary contribution is next in the queue, the Colorado state individual income tax return form shall contain a line whereby each individual taxpayer may designate the amount of the contribution, if any, the individual wishes to make to the Roundup River Ranch fund created in section 39-22-4003 (1).

Source: L. 2011: Entire part added, (HB 11-1071), ch. 294, p. 1397, § 2, effective August 10.

Editor's note: As of the publication date, the revisor of statutes had not received the notice specified in this section.

39-22-4003. Contributions credited to the Roundup River Ranch fund - creation - appropriation. (1) The department of revenue shall determine annually the total amount designated pursuant to section 39-22-4002 and shall report that amount to the state treasurer and to the general assembly. The state treasurer shall credit that amount to the Roundup River Ranch fund, which fund is hereby created in the state treasury. All interest derived from the deposit and investment of moneys in the fund shall be credited to the fund.

(2) The general assembly shall appropriate annually from the Roundup River Ranch fund to the department of revenue its costs of administering moneys designated as contributions to the fund. All moneys remaining in the fund at the end of the fiscal year, after subtracting the appropriation to the department, shall be transferred to Roundup River Ranch, a registered nonprofit organization pursuant to section 501 (c) (3) of the internal revenue code.

Source: L. 2011: Entire part added, (HB 11-1071), ch. 294, p. 1397, § 2, effective August 10.

39-22-4004. Repeal of part. This part 40 is repealed, effective January 1 of the sixth income tax year following the year in which the executive director files written certification with the revisor of statutes as specified in section 39-22-1001 (8) that a line has become available and the Roundup River Ranch voluntary contribution is next in the queue, unless the voluntary contribution to the Roundup River Ranch fund established by this part 40 is continued or reestablished by the general assembly acting by bill prior to said date.

Source: L. 2011: Entire part added, (HB 11-1071), ch. 294, p. 1398, § 2, effective August 10.

Editor's note: As of the publication date, the revisor of statutes had not received the notice specified in this section.

PART 41

FAMILIES IN ACTION FOR MENTAL HEALTH VOLUNTARY CONTRIBUTION

39-22-4101. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) Families in Action for Mental Health is a collaboration of mental health advocacy organizations including Mental Health America of Colorado, which serves as the fiscal manager for Families in Action for Mental Health;

(b) A lack of access to mental health services is often cited as one of the top five health threats within Colorado;

(c) Colorado has been ranked as the eighteenth most depressed state in the United States by Mental Health America;

(d) Colorado has the sixth highest suicide rate in the United States;

(e) Substance use disorders and mental health conditions are Colorado's most prevalent chronic illnesses; and

(f) Children and adolescents make up nearly twenty-five percent of Colorado's population, yet they account for thirty-three percent of the severe mental health needs in the state.

(2) The general assembly further finds and declares that Families in Action for Mental Health:

(a) Offers statewide mental health education, advocacy, information and referrals, support groups, and family programs to all Coloradans in need;

(b) Promotes suicide prevention efforts and education;

(c) Increases access to appropriate mental health services, thus strengthening and enhancing Colorado's mental health safety net system;

(d) Ensures that families obtain community support and services so that children grow up healthy and are able to maximize their potential;

(e) Educates Coloradans about mental health to reduce stigmas; and

(f) Empowers those living with mental health conditions to achieve greater levels of wellness and recovery.

(3) In order to assist Families in Action for Mental Health in fulfilling its mission, the general assembly recognizes that many citizens of Colorado may be willing to provide moneys to assist in its efforts. It is therefore the intent of the general assembly to provide Coloradans the opportunity to support the efforts of Families in Action for Mental Health by allowing citizens to make a voluntary contribution on their state income tax return form to the Families in Action for Mental Health fund for such a purpose.

Source: L. 2011: Entire part added, (SB 11-102), ch. 238, p. 1034, § 2, effective August 10.

39-22-4102. Voluntary contribution designation - procedure - effective date. For the five consecutive income tax years immediately following the year in which the executive director files written certification with the revisor of statutes as specified in section 39-22-1001 (8) that a line has become available and the Families in Action for Mental Health fund voluntary contribution is next in the queue, the Colorado state individual income tax return form shall contain a line whereby each individual taxpayer may designate the amount of the contribution, if any, the individual wishes to make to the Families in Action for Mental Health fund created in section 39-22-4103 (1).

Source: L. 2011: Entire part added, (SB 11-102), ch. 238, p. 1035, § 2, effective August 10.

Editor's note: Pursuant to section 39-22-1001 (8)(b), the executive director of the department of revenue certified to the revisor of statutes on December 5, 2011, that the voluntary contribution for the Families in Action for Mental Health fund was added to the state income tax return form beginning January 1, 2012.

39-22-4103. Contributions credited to the Families in Action for Mental Health fund - creation - appropriation. (1) The department of revenue shall determine annually the total amount designated pursuant to section 39-22-4102 and shall report that amount to the state treasurer and to the general assembly. The state treasurer shall credit that amount to the Families in Action for Mental Health fund, which fund is hereby created in the state treasury. All interest derived from the deposit and investment of moneys in the fund shall be credited to the fund.

(2) The general assembly shall appropriate annually from the Families in Action for Mental Health fund to the department of revenue its costs of administering moneys designated as contributions to the fund. All moneys remaining in the fund at the end of the fiscal year, after subtracting the appropriation to the department, shall be transferred to Mental Health America of Colorado, the nonprofit organization that acts as fiscal manager for Families in Action for Mental Health.

Source: L. 2011: Entire part added, (SB 11-102), ch. 238, p. 1036, § 2, effective August 10.

39-22-4104. Repeal of part. This part 41 is repealed, effective January 1 of the sixth income tax year following the year in which the executive director files written certification with the revisor of statutes as specified in section 39-22-1001 (8) that a line has become available and the Families in Action for Mental Health fund voluntary contribution is next in the queue, unless the voluntary contribution to the Families in Action for Mental Health fund established by this part 41 is continued or reestablished by the general assembly acting by bill prior to said date.

Source: L. 2011: Entire part added, (SB 11-102), ch. 238, p. 1036, § 2, effective August 10.

Editor's note: Pursuant to section 39-22-1001 (8)(b), the executive director of the department of revenue certified to the revisor of statutes on December 5, 2011, that the voluntary contribution for the Families in Action for Mental Health fund was added to the state income tax return form beginning January 1, 2012.

PART 42

PUBLIC EDUCATION FUND VOLUNTARY CONTRIBUTION

39-22-4201. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) Of all of the services provided by state and local governments, public education, beginning with preschool, exercises the most widespread, direct influence on the citizens of the state, ensuring them a wider range of opportunities and a greater likelihood of economic success;

(b) In providing a well-educated citizenry, a well-funded, effective preschool and public education system also increases the likelihood that the state will enjoy a strong economy that attracts investment by businesses and industries that further improve the standard of living for the people of the state; and

(c) During periods of budgetary reductions, it is crucial that the state maintains funding for preschool to the greatest extent possible.

(2) In order to assist in funding preschool, the general assembly recognizes that many citizens of Colorado may be willing to provide moneys to aid the preschool and public education system in its efforts. It is therefore the intent of the general assembly to provide Coloradans with the opportunity to support preschool and public education by allowing citizens to make a voluntary contribution on their state income tax return form to the public education fund for such a purpose.

Source: L. 2011: Entire part added, (SB 11-109), ch. 284, p. 1271, § 1, effective June 2.

39-22-4202. Voluntary contribution designation - procedure. For the five consecutive income tax years immediately following the year in which the executive director files written certification with the revisor of statutes as specified in section 39-22-1001 (8), as enacted by House Bill 11-1097, enacted in 2011, that a line has become available and the public education fund voluntary contribution is next in the queue, the Colorado state individual income tax return form shall contain a line whereby each individual taxpayer may designate the amount of the contribution, if any, the individual wishes to make to the public education fund created in section 39-22-4203 (1).

Source: L. 2011: Entire part added, (SB 11-109), ch. 284, p. 1272, § 1, effective June 2.

Editor's note: As of the publication date, the revisor of statutes had not received the notice specified in this section.

39-22-4203. Contributions credited to the public education fund - creation - appropriation. (1) The department of revenue shall determine annually the total amount designated pursuant to section 39-22-4202 and shall report that amount to the state treasurer and to the general assembly. The state treasurer shall credit that amount to the public education fund, which fund is hereby created in the state treasury. All interest derived from the deposit and investment of moneys in the fund shall be credited to the fund.

(2) The general assembly shall appropriate annually from the public education fund to the department of revenue its costs of administering moneys designated as contributions to the fund. All moneys remaining in the fund at the end of the fiscal year, after subtracting the appropriation to the department of revenue, shall be appropriated to the department of education for use in the Colorado preschool program created in article 28 of title 22, C.R.S.

Source: L. 2011: Entire part added, (SB 11-109), ch. 284, p. 1272, § 1, effective June 2.

39-22-4204. Repeal of part. This part 42 is repealed, effective January 1 of the sixth income tax year following the year in which the executive director files written certification with the revisor of statutes as specified in section 39-22-1001 (8), as enacted by House Bill 11-1097, enacted in 2011, that a line has become available and the public education fund voluntary contribution is next in the queue, unless the voluntary contribution to the public education fund established by this part 42 is continued or reestablished by the general assembly acting by bill prior to said date.

Source: L. 2011: Entire part added, (SB 11-109), ch. 284, p. 1272, § 1, effective June 2.

Editor's note: As of the publication date, the revisor of statutes had not received the notice specified in this section.

PART 43

AMERICAN RED CROSS COLORADO DISASTER RESPONSE, READINESS, AND PREPAREDNESS FUND VOLUNTARY CONTRIBUTION

39-22-4301. Legislative declaration. (1) The general assembly hereby finds, determines, and declares that:

(a) The American Red Cross is a humanitarian organization that brings together well-trained and dedicated volunteers and paid staff to help prevent, prepare for, and respond to emergencies;

(b) The American Red Cross:

(I) Helps military families deliver messages to their loved ones serving our nation in foreign countries; and

(II) Has been instrumental in assisting victims of disasters around the world, including fires, floods, earthquakes, wars, and hurricanes;

(c) Under the leadership of the American Red Cross, thousands of volunteers stand ready to assist those displaced by disaster, wherever and whenever it may strike;

(d) In Colorado, the American Red Cross has trained tens of thousands of citizens in first aid, cardiopulmonary resuscitation, water safety, and other life-saving techniques; and

(e) In the 2011 fiscal year alone, the American Red Cross Colorado Chapters:

(I) Responded to more than four hundred disasters;

(II) Assisted nearly eight hundred families affected by disaster;

(III) Assisted more than five thousand members of the United States armed forces via emergency communications and other services;

(IV) Trained more than ninety-eight thousand individuals in cardiopulmonary resuscitation, first aid, and other health and safety techniques;

(V) Gave preparedness presentations at events attended by more than thirty thousand individuals; and

(VI) Relied on more than three thousand volunteers to fulfill the American Red Cross mission.

(2) In order to assist the American Red Cross Colorado Chapters in fulfilling the mission of the American Red Cross, the general assembly recognizes that many citizens of

Colorado may be willing to provide moneys to assist in its efforts. It is therefore the intent of the general assembly to provide Coloradans the opportunity to support the efforts of the American Red Cross Colorado Chapters by allowing citizens to make a voluntary contribution on their state income tax return form to the American Red Cross Colorado disaster response, readiness, and preparedness fund for such a purpose.

Source: L. 2012: Entire part added, (HB 12-1006), ch. 142, p. 513, § 1, effective August 8.

39-22-4302. Voluntary contribution designation - procedure - effective date. For the five consecutive income tax years immediately following the year in which the executive director files written certification with the revisor of statutes as specified in section 39-22-1001 (8) that a line has become available and the American Red Cross Colorado disaster response, readiness, and preparedness fund voluntary contribution is next in the queue, the Colorado state individual income tax return form shall contain a line whereby each individual taxpayer may designate the amount of the contribution, if any, the individual wishes to make to the American Red Cross Colorado disaster response, readiness, and preparedness fund created in section 39-22-4303 (1).

Source: L. 2012: Entire part added, (HB 12-1006), ch. 142, p. 514, § 1, effective August 8.

Editor's note: As of the publication date, the revisor of statutes had not received the notice specified in this section.

39-22-4303. Contributions credited to the American Red Cross Colorado disaster response, readiness, and preparedness fund - creation - appropriation. (1) The department of revenue shall determine annually the total amount designated pursuant to section 39-22-4302 and shall report that amount to the state treasurer and to the general assembly. The state treasurer shall credit that amount to the American Red Cross Colorado disaster response, readiness, and preparedness fund, which fund is hereby created in the state treasury. All interest derived from the deposit and investment of moneys in the fund shall be credited to the fund.

(2) The general assembly shall appropriate annually from the American Red Cross Colorado disaster response, readiness, and preparedness fund to the department of revenue its costs of administering moneys designated as contributions to the fund. All moneys remaining in the fund at the end of the fiscal year, after subtracting the appropriation to the department, shall be transferred to the American Red Cross Colorado Chapters.

Source: L. 2012: Entire part added, (HB 12-1006), ch. 142, p. 515, § 1, effective August 8.

39-22-4304. Repeal of part. This part 43 is repealed, effective January 1 of the sixth income tax year following the year in which the executive director files written certification with the revisor of statutes as specified in section 39-22-1001 (8) that a line has become available and the American Red Cross Colorado disaster response, readiness, and preparedness fund voluntary contribution is next in the queue, unless the voluntary contribution to the American Red Cross Colorado disaster response, readiness, and preparedness fund established by this part 43 is continued or reestablished by the general assembly acting by bill prior to said date.

Source: L. 2012: Entire part added, (HB 12-1006), ch. 142, p. 515, § 1, effective August 8.

Editor's note: As of the publication date, the revisor of statutes had not received the notice specified in this section.

PART 44

COLORADO FOR HEALTHY LANDSCAPES FUND
VOLUNTARY CONTRIBUTION

39-22-4401. Legislative declaration. (1) The general assembly hereby finds, determines, and declares that:

(a) Colorado for Healthy Landscapes is a collaboration of noxious weed and invasive species control advocacy organizations including the Colorado Weed Management Association, the nonprofit organization that serves as the fiscal manager for Colorado for Healthy Landscapes;

(b) A lack of access to noxious weed and invasive species control services is often cited as one of the leading threats to Colorado's natural resources;

(c) The control efforts to counter the impacts of invasive species cost Americans approximately one hundred twenty billion dollars annually; and

(d) In Colorado:

(I) Stands of tamarisk have decreased bird populations along the Colorado river by ninety-seven percent;

(II) In the flat tops wilderness, yellow toadflax has caused declines in native plant populations, thereby degrading wildlife habitat;

(III) Cheatgrass increases the frequency and intensity of wildfires;

(IV) Leafy spurge has decreased elk habitat usage by over eighty percent and native bird nesting and species numbers by forty-two and thirty-seven percent, respectively;

(V) Diffuse knapweed replaces traditional wildlife forage and degrades wildlife habitat;

(VI) Canada thistle infestations threaten endangered species such as the Colorado butterfly plant; and

(VII) Russian knapweed produces chemicals that displace native plants and degrades wildlife habitat.

(2) The general assembly further finds and declares that Colorado for Healthy Landscapes:

(a) Promotes noxious weed and invasive species prevention efforts and education;

(b) Increases access to appropriate noxious weed and invasive species funding, thus strengthening and enhancing Colorado's noxious weed and invasive species control system;

(c) Ensures that controlling entities obtain community support and services so that landscapes evolve in a healthy manner and are able to maximize their potential; and

(d) Educates Coloradans about noxious weed and invasive species to reduce careless acts that encourage unwanted spread of such species.

(3) In order to assist Colorado for Healthy Landscapes in fulfilling its mission, the general assembly recognizes that many citizens of Colorado may be willing to provide moneys to assist in its efforts. It is therefore the intent of the general assembly to provide Coloradans the opportunity to support the efforts of the Colorado Weed Management Association by allowing citizens to make a voluntary contribution on their state income tax return form to the Colorado for Healthy Landscapes fund for such a purpose. The Colorado Weed Management Association shall administer the moneys in furtherance of its mission to protect Colorado's natural resources from the degrading effects of invasive species of terrestrial and aquatic vegetation.

Source: L. 2012: Entire part added, (HB 12-1290), ch. 140, p. 507, § 1, effective August 8.

39-22-4402. Voluntary contribution designation - procedure - effective date. For the five consecutive income tax years immediately following the year in which the executive director files written certification with the revisor of statutes as specified in section 39-22-1001 (8) that a line on the income tax return form has become available and the Colorado for Healthy Landscapes fund voluntary contribution is next in the queue established pursuant to said section 39-22-1001 (8), the Colorado state individual income

tax return form shall contain a line whereby each individual taxpayer may designate the amount of the contribution, if any, the individual wishes to make to the Colorado for Healthy Landscapes fund created in section 39-22-4403 (1).

Source: L. 2012: Entire part added, (HB 12-1290), ch. 140, p. 509, § 1, effective August 8.

Editor's note: As of the publication date, the revisor of statutes had not received the notice specified in this section.

39-22-4403. Contributions credited to the Colorado for Healthy Landscapes fund - creation - appropriation. (1) The department of revenue shall determine annually the total amount designated pursuant to section 39-22-4402 and shall report that amount to the state treasurer and to the general assembly. The state treasurer shall credit that amount to the Colorado for Healthy Landscapes fund, which fund is hereby created in the state treasury. All interest derived from the deposit and investment of moneys in the fund shall be credited to the fund.

(2) The general assembly shall appropriate annually from the Colorado for Healthy Landscapes fund to the department of revenue its costs of administering moneys designated as contributions to the fund. All moneys remaining in the fund at the end of the fiscal year, after subtracting the appropriation to the department, shall be transferred to the Colorado Weed Management Association, a Colorado nonprofit organization that acts as fiscal manager for Colorado for Healthy Landscapes.

Source: L. 2012: Entire part added, (HB 12-1290), ch. 140, p. 509, § 1, effective August 8.

39-22-4404. Repeal of part. This part 44 is repealed, effective January 1 of the sixth income tax year following the year in which the executive director files written certification with the revisor of statutes as specified in section 39-22-1001 (8) that a line has become available and the Colorado for Healthy Landscapes fund voluntary contribution is next in the queue, unless the voluntary contribution to the Colorado for Healthy Landscapes fund established by this part 44 is continued or reestablished by the general assembly acting by bill prior to said date.

Source: L. 2012: Entire part added, (HB 12-1290), ch. 140, p. 509, § 1, effective August 8.

Editor's note: As of the publication date, the revisor of statutes had not received the notice specified in this section.

Estate and Inheritance and Succession Tax

ARTICLE 23

Inheritance and Succession Tax

39-23-101 to 39-23-170. (Repealed)

Source: L. 2002: Entire article repealed, p. 1358, § 2, effective July 1.

Editor's note: (1) This article was numbered as article 3 of chapter 138, C.R.S. 1963. For amendments to this article prior to its repeal in 2002, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

(2) Section 39-23-150 was amended in House Bill 02-1046, effective October 1, 2002. However, those amendments did not take effect due to the repeal of this article by Senate Bill 02-168, effective July 1, 2002.

ARTICLE 23.5
Colorado Estate Tax

Cross references: For the constitutional provision that establishes limitations on spending, the imposition of taxes, and the incurring of debt, see § 20 of article X of the state constitution.

39-23.5-101.	Short title.		extension.
39-23.5-102.	Definitions.	39-23.5-108.	Payment date - extension -
39-23.5-103.	Tax on transfer of gross estate of domiciliaries - amount - credit - property of a domiciliary defined.		installment.
		39-23.5-109.	Interest.
		39-23.5-110.	Penalty.
39-23.5-104.	Tax on transfer of gross estate of nondomiciliaries - amount - property of a non-domiciliary defined.	39-23.5-111.	Amended returns - final determination.
		39-23.5-112.	Refund for overpayment.
39-23.5-105.	Tax upon transfer of gross estate of aliens - amount - property of alien defined.	39-23.5-113.	Criminal acts relating to returns.
		39-23.5-114.	Liability for payment.
39-23.5-106.	Tax on generation-skipping transfer - amount - property included in generation-skipping transfer.	39-23.5-115.	Administration by department - action for collection of tax - appeals - limitations.
		39-23.5-116.	Deposit of moneys collected - legislative finding.
39-23.5-107.	Tax returns - date to be filed -	39-23.5-117.	Estate tax - effective date - applicability.

39-23.5-101. Short title. This article shall be known and may be cited as the “Colorado Estate Tax Law”.

Source: L. 79: Entire article added, p. 1431, § 16, effective July 3.

39-23.5-102. Definitions. As used in this article, unless the context otherwise requires:
(1) “Alien” means a decedent who, at the time of the decedent’s death, was not domiciled in Colorado or any other state of the United States and was not a citizen of the United States.

(2) “Colorado return” means the Colorado estate tax return with respect to the credit allowable under section 2011 of the internal revenue code and the Colorado generation-skipping transfer tax return with respect to the credit allowable under section 2604 of the internal revenue code.

(3) “Decedent” means a deceased natural person.

(4) “Department” means the department of revenue.

(4.5) Repealed.

(5) “Domiciliary” means a decedent who was domiciled in Colorado at the time of such decedent’s death.

(5.5) “Federal additional estate tax return” means any federal estate tax return designated for reporting the recapture of estate tax under section 2032A of the internal revenue code, the additional estate tax imposed for failure to materially participate in a business, dispositions of interests, or other noncompliance under section 2057 of the internal revenue code, and the additional estate tax imposed for failure to implement the agreement under section 2031 of the internal revenue code.

(6) “Federal credit” means the maximum amount of the credit for state death taxes allowable under section 2011 of the internal revenue code or, in the case of an alien, under section 2102 of the internal revenue code.

(7) “Federal return” means the federal estate tax return with respect to the credit allowable under section 2011 of the internal revenue code and the federal generation-

skipping transfer tax return with respect to the credit allowable under section 2604 of the internal revenue code.

(8) "Generation-skipping transfer" means every transfer for which a credit for state taxes is allowable under section 2604 of the internal revenue code.

(9) "Gross estate" means gross estate as defined in section 2031 of the internal revenue code or, in the case of an alien, in section 2103 of the internal revenue code.

(9.5) "Internal revenue code" means the "Internal Revenue Code of 1986", as amended, and any regulations thereunder. The change of references in this article from the "Internal Revenue Code of 1954" to the "Internal Revenue Code of 1986" shall not affect any act done or any right accrued or accruing before or after such change, but all rights and liabilities shall continue and may be enforced in the same manner as if such references had not been changed.

(10) "Nondomiciliary" means a decedent, other than an alien decedent, who was not domiciled in Colorado at the time of such decedent's death.

(11) "Other state" means any of the fifty states in the United States (other than Colorado), the District of Columbia, or any possession or territory of the United States.

(12) "Person" includes any natural person, corporation, association, limited liability company, partnership, joint venture, syndicate, estate, trust, or other entity under which business or other activities may be conducted.

(13) "Personal representative" means the personal representative of a decedent's estate, as defined by the "Colorado Probate Code", articles 10 to 17 of title 15, C.R.S., or, if there is no personal representative appointed, qualified, and acting within this state, any person in actual or constructive possession of any property of the decedent within the meaning of section 2203 of the internal revenue code.

(13.3) "Person required to file" means any person, including a personal representative, qualified heir, distributee, or trustee required or permitted to file a federal return or a Colorado return pursuant to the provisions of the internal revenue code or this article.

(13.6) "Qualified heir" means a qualified heir as defined in section 2032A (e)(1) of the internal revenue code or as defined in section 2057 (i)(1) of the internal revenue code if the family-owned business deduction provisions of the internal revenue code are applicable.

(14) to (16) Repealed.

(17) "Transfer" means a transfer within the meaning of section 2001 of the internal revenue code.

(17.5) Repealed.

(17.7) "Unified credit" means the credit against federal estate tax under sections 2010 and 2102 (c)(1) of the internal revenue code.

(18) Except as provided in section 39-23.5-108 (5) (c) (I), "value" means gross value as finally determined for purposes of the federal estate tax or generation-skipping transfer tax.

Source: **L. 79:** Entire article added, p. 1431, § 16, effective July 3. **L. 83:** (1), (2), (6) to (9), (13), (17), and (18) amended, (4.5), (9.5), (13.3), (13.6), and (17.5) added, and (14) to (16) repealed, pp. 1532, 1538, §§ 1, 15, effective July 1. **L. 88:** (2), (7), (8), (9.5), and (17) amended and (4.5) and (17.5) repealed, pp. 1325, 1327, §§ 1, 7, effective April 6. **L. 90:** (12) amended, p. 457, § 39, effective April 18. **L. 92:** (5.5) and (17.7) added and (18) amended, p. 2247, § 2, effective July 1. **L. 98:** (5.5) and (13.6) amended, p. 314, § 1, effective July 1. **L. 99:** (5.5) and (13.6) amended, p. 630, § 43, effective August 4.

39-23.5-103. Tax on transfer of gross estate of domiciliaries - amount - credit - property of a domiciliary defined. (1) A tax in the amount of the federal credit is imposed on the transfer of the gross estate of every domiciliary. For Colorado estate tax purposes, no credit for taxes is allowable in determining such federal credit other than the unified credit.

(2) If any property of a domiciliary is subject to a death tax imposed by another state or states for which a credit is allowable under section 2011 of the internal revenue code, the amount of the tax due under this article shall be reduced by the lesser of:

(a) The amount of the death tax paid the other state which is allowed as a credit against the federal estate tax; or

(b) An amount determined by multiplying the federal credit by a fraction, the numerator of which is the value of the domiciliary's gross estate less the value of the property of a domiciliary, as defined in subsection (3) of this section, that is included in the domiciliary's gross estate and the denominator of which is the value of the domiciliary's gross estate.

(3) Property of a domiciliary includes real property held in trust or otherwise that is not situated in some other state; tangible personal property except that which has an actual situs in some other state; and all intangible personal property, wherever the notes, bonds, stock certificates, or other evidence, if any, thereof may be physically located or wherever the banks or other debtors thereof may be located or domiciled; except that real property in a personal trust shall not be taxed if such real property has an actual situs in some other state.

Source: L. 79: Entire article added, p. 1432, § 16, effective July 3. L. 83: (1) and (2) amended, p. 1533, § 2, effective July 1. L. 92: (1) and (3) amended, p. 2248, § 3, effective July 1.

ANNOTATION

Law reviews. For article, "Computation of Interrelated Marital and Charitable Deductions", see 11 Colo. Law. 915 (1982).

39-23.5-104. Tax on transfer of gross estate of nondomiciliaries - amount - property of a nondomiciliary defined. (1) A tax in an amount determined as provided in this section is imposed on the transfer of the gross estate located in Colorado of every nondomiciliary.

(2) The tax shall be an amount determined by multiplying the federal credit by a fraction, the numerator of which is the value of the property located in Colorado which is included in the gross estate and the denominator of which is the value of the nondomiciliary's gross estate. For Colorado estate tax purposes, no credit for taxes is allowable in determining such federal credit under this subsection (2) other than the unified credit.

(3) Property located in Colorado of a nondomiciliary includes real property situated in this state held in trust or otherwise and tangible personal property which has an actual situs in this state, but intangibles that have acquired an actual or business situs in this state shall not be taxable.

Source: L. 79: Entire article added, p. 1433, § 16, effective July 3. L. 83: (1) and (2) amended, p. 1534, § 3, effective July 1. L. 92: (2) amended, p. 2248, § 4, effective July 1.

39-23.5-105. Tax upon transfer of gross estate of aliens - amount - property of alien defined. (1) A tax in an amount determined as provided in this section is imposed on the transfer of the gross estate located in Colorado of every alien.

(2) The tax shall be an amount determined by multiplying the federal credit by a fraction, the numerator of which is the value of the property located in Colorado which is included in the gross estate and the denominator of which is the value of the alien's gross estate. For Colorado estate tax purposes, no credit for taxes is allowable in determining such federal credit under this subsection (2) other than the unified credit.

(3) Property located in Colorado of an alien includes real property situated in this state held in trust or otherwise; tangible personal property which has an actual situs in this state; and intangible personal property if the physical evidence of such property is located within this state or if such property is directly or indirectly subject to protection, preservation, or regulation under the laws of this state, to the extent such property is included in the decedent's gross estate.

Source: **L. 79:** Entire article added, p. 1433, § 16, effective July 3. **L. 83:** (1) amended, p. 1534, § 4, effective July 1. **L. 92:** (2) amended, p. 2248, § 5, effective July 1.

39-23.5-106. Tax on generation-skipping transfer - amount - property included in generation-skipping transfer. (1) A tax in an amount determined as provided in this section is imposed on every generation-skipping transfer.

(2) The tax shall be an amount determined by multiplying the maximum amount allowable under section 2604 of the internal revenue code by a fraction, the numerator of which is the value of the property located in Colorado included in the generation-skipping transfer and the denominator of which is the value of all property included in the generation-skipping transfer.

(3) Property located in Colorado includes real property situated in this state held in trust or otherwise; tangible personal property which has an actual situs in this state; and intangible personal property owned by a trust having its principal place of administration in this state at the time of the generation-skipping transfer.

Source: **L. 79:** Entire article added, p. 1433, § 16, effective July 3. **L. 83:** (2) amended, p. 1534, § 5, effective July 1. **L. 88:** (2) amended, p. 1326, § 2, effective April 6.

ANNOTATION

Law reviews. For article, "Automatic and Elective Allocation of Generation-Skipping Transfer Tax Exemption", see 32 Colo. Law. 69 (March 2003).

39-23.5-107. Tax returns - date to be filed - extension. (1) With respect to every gross estate or generation-skipping transfer, the person required to file a federal return shall file with the department on or before the date the federal return is required to be filed:

- (a) A Colorado return for the tax due under this article; and
- (b) A true copy of the federal return.

(2) If the person required to file has obtained an extension of time for filing the federal return, the filing required by subsection (1) of this section shall be similarly extended until the end of the time period granted in the extension of time for filing the federal return. A true copy of said extension shall be filed with the department within thirty days of issuance.

(3) No Colorado return need be filed if the gross estate or generation-skipping transfer does not require the filing of a federal return.

(4) If the gross estate or generation-skipping transfer does not require the filing of a Colorado return, the person who would otherwise be required to file a Colorado return may apply to the department for the issuance of a certificate of tax determination. If the department is satisfied that the gross estate or generation-skipping transfer is not subject to the tax imposed by this article or that the tax liability has been fully discharged, it shall issue a certificate of tax determination. Such certificate, when issued, shall indicate it has been determined, based upon the Colorado return as filed, that the person who filed the Colorado return is free of any claim by the state for taxes owed under this article.

(5) No tax waiver, consent to transfer, certificate of tax determination, or similar document shall be required for the transfer of any real or personal property located in Colorado included in a gross estate or generation-skipping transfer in the case of decedents dying and generation-skipping transfers occurring on or after July 1, 1980.

(6) If any person fails or refuses to make any return required by this article, the executive director may make such return for such person from such information as may be available, and any assessment based on such return made by the executive director shall be as good and sufficient as if such return had been made and filed by the person liable therefor.

(7) Any person who makes a special use valuation election in a federal return and who is required to file a federal additional estate tax return as a result of a premature disposition of property or premature cessation of the qualified use shall file with the department on or before the date the federal additional estate tax return is required to be filed:

- (a) A Colorado return for the estate tax due under this article; and

(b) A true copy of the federal additional estate tax return.

(8) Any person who makes a family-owned business deduction election in a federal return and who is required to file a federal additional estate tax return as a result of failure to materially participate in the business, disposition of interest, or other noncompliance with the requirements of section 2057 of the internal revenue code shall file with the department on or before the date the federal additional estate tax return is required to be filed:

(a) A Colorado return for the estate tax due under this article; and

(b) A true and correct copy of the federal additional estate tax return.

(9) Any person who elects a qualified conservation easement exclusion in a federal return as allowed under section 2031 of the internal revenue code and who is required to file a federal additional estate tax return as a result of failure to implement the agreement described in section 2031 of the internal revenue code shall file with the department on or before the date the federal additional estate tax return is required to be filed:

(a) A Colorado return for the estate tax due under this article; and

(b) A true and correct copy of the federal additional estate tax return.

Source: **L. 79:** Entire article added, p. 1433, § 16, effective July 3. **L. 80:** (4) amended, p. 797, § 63, effective June 5; (3) and (4) added, p. 523, § 2, effective July 1. **L. 83:** IP(1) and (2) to (4) amended and (5) added, p. 1534, § 6, effective July 1. **L. 85:** (6) added, p. 1255, § 6, effective January 1, 1986. **L. 87:** IP(1), (3), and (4) amended, p. 1470, § 1, effective April 22. **L. 92:** (7) added, p. 2249, § 6, effective July 1. **L. 98:** (8) and (9) added, p. 314, § 2, effective July 1. **L. 99:** IP(8) amended, p. 630, § 44, effective August 4.

39-23.5-108. Payment date - extension - installment. (1) The tax due under this section shall be paid to the department by the person required to file not later than the date the Colorado return is required to be filed under section 39-23.5-107.

(2) If the person required to file has obtained an extension of time for payment of the federal tax or has elected to pay such tax in installments, such person may elect to extend the time for payment of the tax due under this article in accordance with such extension, or to pay such tax in installments, in the same manner as provided for payment of the federal tax. Such election shall be made by:

(a) Filing with the department at the time such tax is due a true copy of the application for extension of time for payment or the election to pay the federal tax in installments with the returns required under section 39-23.5-107; and

(b) In the case of installment payments, an agreement consenting to the creation of a special lien under subsection (5) of this section filed with the department on or before the due date for filing the Colorado return, including extensions of time for filing such return. The department may also grant extensions for the filing of such an agreement.

(3) Any person making an estimated federal estate tax payment with the federal application for extension of time for payment shall make an estimated Colorado estate tax payment to the department not later than the date the application for extension of time for payment is filed under subsection (2) of this section. A true copy of the federal extension of time for payment indicating the action taken by the internal revenue service shall be filed with the department within thirty days of issuance.

(4)¹ Any person making the election to pay the Colorado estate tax in installments under subsection (2) of this section may not defer a percentage of such tax exceeding the percentage of federal tax actually deferred and may not defer an amount of tax greater than the tax attributable to the interest in the closely held business subject to such tax. Proof of the federal estate tax installment payment shall be submitted annually with the Colorado estate tax installment payment.

(5) (a) As used in this subsection (5):

(I) “Deferral period” means the period for which the payment of tax under this article is deferred pursuant to the election to pay such tax in installments under subsection (2) of this section.

(II) “Deferred amount” means the amount of tax under this article that is deferred pursuant to subsection (2) of this section.

(III) “Required interest amount” means the interest payable to the department over the first four years that taxes are deferred pursuant to subsection (2) of this section.

(IV) “Section 6166 lien property” means interests in real and other property to the extent that such interests can be expected to survive the deferral period and are designated in the agreement required by paragraph (b) of subsection (2) of this section consenting to the creation of a special lien under this subsection (5).

(b) In the case of installment payments, the deferred amount, plus any interest, penalties, and costs attributable to such deferred amount, shall be a special lien in favor of the state on the section 6166 lien property. Except as otherwise provided in this subsection (5) and subsection (2) of this section, such special lien shall be subject to the same conditions, limitations, definitions, terms, and other provisions of the internal revenue code as the special lien in favor of the United States under section 6324A of such code for federal estate tax deferred under section 6166 of such code. For the purpose of applying the provisions of such code to the special lien under this subsection (5), the terms defined in paragraph (a) of this subsection (5) shall have the meanings given them in such paragraph, and the term “secretary” shall refer to the department.

(c) (I) As used in this paragraph (c), “value” shall have the same meaning as it has when it is used in section 6324A(b) of the internal revenue code.

(II) The value required as section 6166 lien property shall be the deferred amount and the required interest amount. For this purpose, the deferred amount and the required interest amount shall be determined as of the date prescribed for the payment of the tax imposed by this article, and the value required as section 6166 lien property shall be determined by taking into account any encumbrances including any federal tax liens. Only property subject to the jurisdiction of the courts of this state shall be recognized in determining the value of section 6166 lien property required by this subsection (5).

(d) Except as otherwise provided in this subsection (5), the agreement referred to in this subsection (5) shall meet the requirements of the agreement referred to in section 6324A of the internal revenue code. The personal representative shall be named as agent in the agreement consenting to the special lien unless another person is named as the agent in a similar agreement filed with and accepted by the federal tax authorities. In the case that such other person is named in both such agreements, the department shall deal with such other person in matters relating to the installment payments and the special lien.

(e) The special lien shall arise when the department files notice thereof in accordance with the applicable provisions of the internal revenue code and shall continue until the deferred amount, plus any interest, penalties, and costs attributable to the deferred amount, is satisfied or such lien is released. The department may release such lien in whole or in part.

(f) (I) In the event of any default in the payment of the tax due under this article or any other act or failure to act permitting the acceleration of the payment of installments, the executive director of the department, through the attorney general, may bring and prosecute an action in the name of the state as plaintiff for the purpose of enforcing such lien against all or any of the property subject thereto in all cases where any tax has become a lien upon any property under the provisions of this article. In any such action the owner of any property, or of any interest in the property, against which the lien of any such tax is sought to be enforced, and any predecessor in interest of any such owner whose title or interest was deraigned through any such decedent by will or succession or by decree of distribution of the estate of such decedent or any lien or encumbrance subsequent to the lien of such tax may be made a party defendant.

(II) Actions may be brought against the state by any interested person for the purpose of quieting the title to any property against the lien or claim of lien of any taxes under this article or for the purpose of having it determined that any property is not subject to any lien for taxes, nor chargeable with any tax under this article. An action shall not be maintained where any proceedings are pending in any court of this state wherein the taxability of such transfer and the liability therefor, and the amount thereof, may be determined. All parties interested in said transfer and in the taxability thereof shall be made parties thereto, and any interested person who refuses to join as plaintiff therein may be a defendant. Summons for the state in such action shall be served upon the attorney general. Should the court determine that the property described in the complaint is subject to the lien of said tax and

that such property has been transferred within the meaning of this article, the court shall award affirmative relief to the state, and judgment shall be rendered therein in favor of the state ascertaining and determining the amount of such tax, the person liable, and the property chargeable or subject to the lien.

(6) The personal representative shall file notice with the department of any default in the payment of amounts or other act or failure to act with respect to the payment of the corresponding amounts of federal tax or with respect to any bonds or special liens thereon which could or do result in the termination of the extension or deferral of the payment of the federal tax under the internal revenue code. Such notice shall specify the name and account number of the estate and the nature and circumstances of such default, act, or failure to act and shall be filed within ten days of such default, act, or failure to act. The department may accelerate the payment of tax, and interest and penalties thereon, extended or deferred under subsection (2) of this section when:

(a) Any default, other act, or failure to act with respect to the payment of the corresponding amounts of federal tax results in the termination of the extension or of the deferral of the payment of such federal tax; or

(b) Any similar default, act, or failure to act occurs with respect to the payment of the tax due under this article, including any failure to timely file the notice required by this subsection (6) or, in the case of installment payments, with respect to the special lien under subsection (5) of this section, including any failure to add property as required and within the time allowed under the applicable internal revenue code provisions.

Source: L. 79: Entire article added, p. 1434, § 16, effective July 3. L. 83: Entire section amended, p. 1535, § 7, effective July 1. L. 92: (2) amended and (3) to (6) added, p. 2249, § 7, effective July 1. L. 2002: (5)(f) amended, p. 1362, § 20, effective July 1.

39-23.5-109. Interest. (1) Any tax due under this article which is not paid within nine months after the date of the decedent's death or the generation-skipping transfer shall bear interest on the unpaid balance due at the rate prescribed by section 39-21-110.5 from nine months after such death or transfer until such tax is paid. The interest imposed by this section shall apply regardless of any extension of time to pay the tax or of any election to use an installment method of payment of the tax.

(2) If a special use valuation election was made in a federal return and thereafter additional Colorado estate tax is due as a result of a premature disposition of property or premature cessation of the qualified use, interest shall accrue from the due date of the federal additional estate tax return regardless of any federal extension of time for payment.

(3) If a qualified family-owned business deduction election was made in a federal return and thereafter additional Colorado estate tax is due as a result of failure to materially participate in the business, disposition of interests, or other noncompliance with the requirements of section 2057 of the internal revenue code, interest shall accrue from the due date of the federal additional estate tax return regardless of any federal extension of time for payment.

(4) If a qualified conservation easement election was made on a federal return and thereafter additional Colorado estate tax is due as a result of any failure to implement the agreement described in section 2031 of the internal revenue code, interest shall accrue from the due date of the federal additional estate tax return regardless of any federal extension of time for payment.

Source: L. 79: Entire article added, p. 1434, § 16, effective July 3. L. 83: Entire section amended, p. 1535, § 8, effective July 1. L. 92: Entire section amended, p. 2252, § 8, effective July 1. L. 98: (2) amended and (3) and (4) added, p. 315, § 3, effective July 1. L. 99: (3) amended, p. 630, § 45, effective August 4.

39-23.5-110. Penalty. (1) If any person fails to pay any tax by the date due under the provisions of this article, there shall be collected as a penalty for such failure the greater of the sum of fifteen dollars or five percent of the amount of such tax if the failure is for not

more than one month, with an additional five percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty percent in the aggregate. The executive director may reduce or waive the penalty imposed by this subsection (1) for reasonable cause.

(2) If any person fraudulently or willfully fails to file any return under the provision of this article, there shall be collected as a penalty for such failure the sum of seventy-five dollars or one hundred percent of the amount of the tax, if any, whichever is greater.

(3) If any person files a fraudulent or willfully false return under the provisions of this article, there shall be collected as a penalty the sum of one hundred dollars or one hundred fifty percent of the amount of the tax, if any, whichever is greater.

(4) If, after determination and assessment of any tax imposed by this article, any person fails to pay the same within the time specified by any notice and demand sent to him by the executive director, there shall be collected as a penalty for such failure a sum equal to fifteen percent of the amount of the tax demanded.

(5) If any person fraudulently fails to pay any tax when due under the provisions of this article or willfully seeks to evade the payment thereof, there shall be collected as a penalty for such failure a sum equal to one hundred fifty percent of the amount of the tax.

(6) In the case of failure to file the Colorado return on the date prescribed by section 39-23.5-107, determined with regard to any extension of time for filing, there shall be collected as a penalty for such failure an amount equal to five percent of the amount of the tax due under this article, with an additional five percent per month or portion thereof, during which such failure continues, not exceeding twenty percent in the aggregate. If a similar penalty for failure to file timely the federal return for estate taxes is waived, such waiver shall be deemed to constitute reasonable cause for purposes of this section. The executive director may reduce or waive the penalty imposed by this subsection (6) for reasonable cause.

(7) All of the penalties provided in subsections (1) to (6) of this section shall be cumulative and shall be collected at the same time and in the same manner as the tax, with the exception that, if the penalties provided for in subsections (1) and (6) of this section both apply, then only the larger of the two penalties shall be assessed, or, if equal, only one penalty shall apply.

Source: L. 79: Entire article added, p. 1434, § 16, effective July 3. L. 85: Entire section R&RE, p. 1256, § 7, effective January 1, 1986. L. 87: (1), (6), and (7) amended, p. 1461, § 2, effective April 22.

39-23.5-111. Amended returns - final determination. (1) If the person required to file files an amended federal return, he shall immediately file with the department an amended Colorado return and a true copy of the amended federal return. If the person required to file is required to pay an additional tax under this article pursuant to such amended return, he shall pay such additional tax, together with interest as provided in section 39-23.5-109, at the same time he files the amended return, subject, however, to any extension or installment election under section 39-23.5-108.

(2) Upon final determination or redetermination of the federal tax due in respect of any gross estate or generation-skipping transfer, the person required to file shall, within sixty days after such determination or redetermination, give written notice of it to the department, in such form as may be prescribed by regulation. If any additional tax is due under this article by reason of such determination or redetermination, the person required to file shall pay the same, together with interest as provided in section 39-23.5-109, at the same time he files such notice, subject, however, to any extension or installment election under section 39-23.5-108.

Source: L. 79: Entire article added, p. 1434, § 16, effective July 3. L. 83: Entire section amended, p. 1536, § 9, effective July 1.

39-23.5-112. Refund for overpayment. (1) Whenever the department determines that the tax due under this article has been overpaid, the department is authorized to refund

the amount of the overpayment, together with interest at the rate prescribed by section 39-21-110.5 from the date of the overpayment or from nine months after the date of the decedent's death or the generation-skipping transfer, whichever is later, pursuant to a claim for refund for the same filed by the person required to file the return or the person who paid the tax. No claim for refund may be filed after the later of either:

(a) The last day provided under the internal revenue code for filing a claim for refund for the corresponding federal tax, taking into account any extensions and suspensions of the period for making such a filing; or

(b) The last date that an assessment could be made by the department with respect to such tax under section 39-23.5-115 (4).

Source: L. 79: Entire article added, p. 1435, § 16, effective July 3. L. 83: Entire section amended, p. 1536, § 10, effective July 1. L. 89: Entire section amended, p. 1497, § 3, effective June 7. L. 92: Entire section amended, p. 2252, § 9, effective July 1.

39-23.5-113. Criminal acts relating to returns. Any person who willfully fails to file a Colorado return when required by this article, or who willfully files a false return, or who willfully fails to pay any tax required by this article shall be punished as provided by section 39-21-118.

Source: L. 79: Entire article added, p. 1435, § 16, effective July 3. L. 80: Entire section R&RE, p. 523, § 3, effective July 1. L. 83: Entire section amended, p. 1536, § 11, effective July 1. L. 85: Entire section amended, p. 1256, § 8, effective January 1, 1986.

39-23.5-114. Liability for payment. (1) The tax imposed by this article shall be paid by the person required to file. No person required to file shall be liable for a sum greater than the value of the property actually received by him.

(2) If the tax imposed by this article is not paid when due, the spouse, qualified heir, distributee, transferee, trustee (except the trustee of an employees' trust which meets the requirement of section 401 (a) of the internal revenue code), surviving tenant, person in possession of the property by reason of the exercise, nonexercise, or release of a power of appointment, or beneficiary who receives, or has on the date of the decedent's death, property included in the gross estate or the generation-skipping transfer shall, to the extent of the value of such property for Colorado tax purposes, be personally liable for such tax. The personal liability imposed by this subsection (2) shall, with respect to estates of decedents dying or generation-skipping transfers occurring on or after July 1, 1980, not be valid as against any purchaser, mortgagee, pledgee, or transferee of, or a holder of a security interest in, such property if acquired by him for a full and adequate consideration in money or money's worth. A recorded instrument on which a state documentary fee is noted pursuant to section 39-13-103 shall be prima facie evidence that the transfer described in such instrument was for full and adequate consideration in money or money's worth.

Source: L. 79: Entire article added, p. 1435, § 16, effective July 3. L. 83: Entire section amended, p. 1536, § 12, effective July 1.

39-23.5-115. Administration by department - action for collection of tax - appeals - limitations. (1) The department is charged with the administration and enforcement of this article and may promulgate such rules and regulations under the "State Administrative Procedure Act", article 4 of title 24, C.R.S., as may be required to effectuate the purposes of this article.

(2) The department is authorized to collect the tax provided for in this article, including applicable interest and penalties, and shall represent this state in all matters pertaining to the same, either before courts or in any other manner. The department may institute proceedings for the collection of this tax and any interest and penalties on the tax under the provisions of sections 24-4-106 and 24-35-109, C.R.S., or any other applicable law, in the probate court of Denver or in any other court of competent jurisdiction. The mailing of a notice of

final agency action shall be considered a final agency action or a final order of such an agency for the purposes of judicial review under section 24-4-106, C.R.S., and such action or order shall become effective sixty days after the mailing of said notice. No distraint and sale proceedings under the provisions of section 24-35-109, C.R.S., shall be commenced until such final agency action or final order of such agency is no longer subject to judicial review under the provisions of section 24-4-106, C.R.S.

(3) Nothing in this article shall be construed to deny the right of appellate review as provided by law and the Colorado appellate rules.

(4) (a) As used in this subsection (4) and subsections (5) and (6) of this section, the term "tax" includes penalty.

(b) Except as otherwise provided in paragraphs (c) to (e) of this subsection (4) and subsection (6) of this section, the assessment of any tax imposed by this article shall be made within the later of either:

(I) Three years after the filing of the applicable Colorado return; or

(II) One year after the expiration of the period of time provided under the internal revenue code, together with any extensions and suspensions of such period under such code, for assessing a deficiency in the corresponding federal tax or changing the reported federal gross estate or generation-skipping transfer.

(c) Where, before the expiration of the period of limitations on assessment, both the department and the person required to file have consented in writing to an assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(d) A written proposed adjustment by the department of any tax liability under this article sent to the person required to pay the tax or the representative of such person before the expiration of the period of limitation on assessment under this subsection (4) shall extend such period with respect to such proposed adjustment for one year after a final determination, with respect to such proposed adjustment, or assessment is made.

(e) In the event that a federal amended return is filed, the running of the period of limitations on assessment under this subsection (4) shall be suspended with respect to any additional tax due under this article by reason of such amended return until the date that an amended Colorado return with a true copy of such amended federal return is filed with the department of revenue as required by section 39-23.5-111 (1). In the event that a final determination of federal tax due is made, the running of the period of limitations on assessment under this subsection (4) shall be suspended with respect to any additional tax due under this article by reason of such determination until written notice of such determination, in the form required by regulation, is given to the department as required by subsection (2) of this section.

(f) For the purposes of this subsection (4) and section 39-23.5-112, a tax return filed before the last day prescribed by law or by regulation promulgated pursuant to law for the filing thereof shall be considered as filed on such last day.

(5) (a) Except as provided in paragraph (b) of this subsection (5) and subsection (6) of this section, an assessment of any tax imposed under this article having been made according to law shall be good and valid, and collection thereof and interest thereon may be enforced at any time within six years from the date of said assessment.

(b) The running of the period of limitations for collection of any such tax shall be suspended for the period of any extension of time for payment thereof under the provisions of section 39-23.5-108 (2).

(6) In the case of failure to file a return or the filing of a false or fraudulent return with the intent to evade tax, the tax may be assessed and collected at any time.

(7) In the event that the federal tax authorities collect or otherwise receive payment of the gross federal tax with respect to which the federal credit would be allowable but for the failure to pay the amount of such federal credit to the department as tax under this article by the person required to file the return or to provide such authorities with acceptable proof of such payment, the Denver probate court or other court of competent jurisdiction shall, on motion of the department:

(a) Order such person to secure the refund of the amount of tax from the federal tax authorities attributable to such federal credit on the behalf of the department in payment of the tax under this article; or

(b) Appoint any qualified person or the department as special administrator for the purpose of securing such refund on behalf of the department in payment of the tax under this article.

Source: L. 79: Entire article added, p. 1435, § 16, effective July 3. L. 83: (2) amended, p. 1536, § 13, effective July 1. L. 92: (4) to (7) added, p. 2253, § 10, effective July 1.

39-23.5-116. Deposit of moneys collected - legislative finding. (1) In order to provide revenue for the old age pension fund created and established by article XXIV of the state constitution in an amount at least equal to that presently provided by the inheritance tax laws of this state, which laws shall not apply to estates of decedents dying on or after January 1, 1980, all moneys collected by the department under this article are hereby allocated to and shall be deposited in the old age pension fund created and established by article XXIV of the state constitution.

(2) The general assembly finds that subsection (1) of this section repeals no law which provides revenue for the old age pension fund and amends no law so as to reduce the revenue provided for the old age pension fund, except as is allowed by article XXIV of the state constitution.

Source: L. 79: Entire article added, p. 1436, § 16, effective July 3.

39-23.5-117. Estate tax - effective date - applicability. This article shall take effect January 1, 1980, and shall apply to the estates of decedents dying on or after said date.

Source: L. 79: Entire article added, p. 1436, § 16, effective July 3. L. 2002: Entire section amended, p. 1359, § 3, effective July 1.

ARTICLE 24

Interstate Compromise, Arbitration - Inheritance Tax

39-24-101.	Short title.	39-24-107.	Powers of board.
39-24-102.	Definitions.	39-24-108.	Determination of domicile.
39-24-103.	Interpretation.	39-24-109.	Majority vote.
39-24-104.	Compromise agreement - filing - penalty.	39-24-110.	Filing of determination.
39-24-105.	Arbitration agreement - board of arbitrators.	39-24-111.	Penalties for nonpayment.
39-24-106.	Hearings.	39-24-112.	Compromise by parties.
		39-24-113.	Compensation and expenses.
		39-24-114.	Reciprocal application.

39-24-101. Short title. This article shall be known and may be cited as the "Uniform Act on Interstate Compromise and Arbitration of Inheritance Taxes".

Source: L. 53: p. 355, § 1. CRS 53: § 138-8-1. C.R.S. 1963: § 138-7-1.

39-24-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "State" means any state, territory, or possession of the United States and the District of Columbia.

Source: L. 53: p. 355, § 2. CRS 53: § 138-8-2. C.R.S. 1963: § 138-7-2.

39-24-103. Interpretation. This article shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

Source: L. 53: p. 355, § 3. CRS 53: § 138-8-3. C.R.S. 1963: § 138-7-3.

39-24-104. Compromise agreement - filing - penalty. (1) When the executive director of the department of revenue claims that a decedent was domiciled in this state at the time of his death and the taxing authorities of another state make a like claim on behalf of their state, the said executive director may make a written agreement of compromise with the other taxing authorities and the executor or administrator of such decedent that a certain sum shall be accepted in full satisfaction of all inheritance taxes imposed by this state, including any interest or penalties to the date of signing the agreement. The agreement shall also fix the amount to be accepted by the other states in full satisfaction of inheritance taxes. The executor or administrator of such decedent is authorized to make such agreement. Such agreement shall finally and conclusively fix and determine the amount of tax payable to this state without regard to any other provision of the laws of this state.

(2) Unless the tax so agreed upon is paid within sixty days after the signing of such agreement, interest or penalties shall thereafter accrue upon the amount fixed in the agreement, but the time between the decedent's death and the signing of such agreement shall not be included in computing the interest or penalties. In the event the aggregate amount payable under such agreement to the states involved is less than the maximum credit allowable to the estate against the United States estate tax imposed with respect thereto, the personal representatives forthwith shall also pay to the department of revenue so much of the difference between such aggregate amount and the amount of such credit as the amount payable to the department under the agreement bears to such aggregate amount. A copy of any such agreement shall be filed in the court having jurisdiction of the administration of the estate and any existing appraisement shall be deemed modified according to said agreement.

(3) In the event no appraisement has been made and filed prior to said agreement, the executive director of the department of revenue shall direct an appraisement to be made and filed in the court having jurisdiction of the administration of the estate in accordance with said agreement.

Source: L. 53: p. 355, § 4. CRS 53: § 138-8-4. C.R.S. 1963: § 138-7-4. L. 73: p. 1474, § 34.

39-24-105. Arbitration agreement - board of arbitrators. When the executive director of the department of revenue claims that a decedent was domiciled in this state at the time of his death and the taxing authorities of another state make a like claim on behalf of their state, the said executive director may make a written agreement with the other taxing authorities and with the executor or administrator of such decedent to submit the controversy to the decision of a board consisting of one or any uneven number of arbitrators, referred to in this article as the "board". The executor or administrator of such decedent is authorized to make the agreement. The parties to the agreement shall select the arbitrator or arbitrators.

Source: L. 53: p. 356, § 5. CRS 53: § 138-8-5. C.R.S. 1963: § 138-7-5. L. 73: p. 1475, § 35.

39-24-106. Hearings. The board shall hold hearings at such times and places as it may determine upon reasonable notice to the parties to the agreement, all of whom shall be entitled to be heard, to present evidence, and to examine and cross-examine witnesses.

Source: L. 53: p. 356, § 6. CRS 53: § 138-8-6. C.R.S. 1963: § 138-7-6.

39-24-107. Powers of board. The board has power to administer oaths, take testimony, subpoena and require the attendance of witnesses and the production of books, papers, and

documents, and issue commissions to take testimony. Subpoenas may be signed by any member of the board. In case of failure to obey a subpoena, any judge of a court of record of this state, upon application by the board, may make an order requiring compliance with the subpoena, and the court may punish failure to obey the order as a contempt.

Source: L. 53: p. 357, § 7. CRS 53: § 138-8-7. C.R.S. 1963: § 138-7-7.

39-24-108. Determination of domicile. The board, by majority vote, shall determine the domicile of the decedent at the time of his death. This determination shall be final for purposes of imposing and collecting inheritance taxes but for no other purpose.

Source: L. 53: p. 357, § 8. CRS 53: § 138-8-8. C.R.S. 1963: § 138-7-8.

39-24-109. Majority vote. Except as provided in section 39-24-107 in respect to the issuance of subpoenas, all questions arising in the course of the proceedings shall be determined by a majority vote of the board.

Source: L. 53: p. 357, § 9. CRS 53: § 138-8-9. C.R.S. 1963: § 138-7-9.

39-24-110. Filing of determination. The executive director of the department of revenue, the board, or the executor or administrator of such decedent shall file the determination of the board as to domicile, the record of the board's proceedings, and the agreement or a duplicate made pursuant to section 39-24-105, with the authority having jurisdiction to assess or determine the inheritance taxes in the state determined by the board to be the domicile of the decedent, and shall file copies of such documents with the authorities that would have been empowered to assess or determine the inheritance taxes in each of the other states involved.

Source: L. 53: p. 357, § 10. CRS 53: § 138-8-10. C.R.S. 1963: § 138-7-10. L. 73: p. 1475, § 36.

39-24-111. Penalties for nonpayment. If it is determined by the board that the decedent died domiciled in this state, interest or penalties, if otherwise imposed by law for nonpayment of inheritance taxes between the date of the agreement and of filing of the determination of the board as to domicile, shall not exceed ten percent per annum.

Source: L. 53: p. 357, § 11. CRS 53: § 138-8-11. C.R.S. 1963: § 138-7-11.

39-24-112. Compromise by parties. Nothing in this article shall prevent at any time a written compromise, if otherwise lawful, by all parties to the agreement made pursuant to section 39-24-104, fixing the amounts to be accepted by this and any other state involved in full satisfaction of inheritance taxes.

Source: L. 53: p. 357, § 12. CRS 53: § 138-8-12. C.R.S. 1963: § 138-7-12.

39-24-113. Compensation and expenses. The compensation and expenses of the members of the board and its employees may be agreed upon among such members and the executor or administrator and, if they cannot agree, shall be fixed by any court having jurisdiction over probate matters of the state determined by the board to be the domicile of the decedent. The amounts so agreed upon or fixed shall be deemed an administration expense and shall be paid by the executor or administrator.

Source: L. 53: p. 357, § 13. CRS 53: § 138-8-13. C.R.S. 1963: § 138-7-13.

39-24-114. Reciprocal application. The provisions of this article relative to arbitration shall apply only to cases in which and so far as each of the states involved has a law identical or substantially similar to this article.

Source: L. 53: p. 358, § 14. CRS 53: § 138-8-14. C.R.S. 1963: § 138-7-14.

Gift Tax

ARTICLE 25

Gift Tax

39-25-101 to 39-25-120. (Repealed)

Source: L. 2003: Entire article repealed, p. 2003, § 69, effective May 22.

Editor’s note: This article was numbered as article 4 of chapter 138, C.R.S. 1963. For amendments to this article prior to its repeal in 2003, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

Sales and Use Tax

ARTICLE 26

Sales and Use Tax

Cross references: For the constitutional provision that establishes limitations on spending, the imposition of taxes, and the incurring of debt, see § 20 of article X of the state constitution; for the county and municipal sales or use tax law, see article 2 of title 29.

Law reviews: For article, “Three Sources of Municipal Revenue in Colorado”, see 19 Colo. Law. 2065 (1990); for article, “Colorado Sales and Use Taxes In the Multistate Context”, see 20 Colo. Law. 501 (1991); for article, “Colorado Business Asset Acquisitions: A Tax Trap for the Unwary”, see 26 Colo. Law. 65 (September 1997); for article, “A Survey of the Law of Colorado Nonprofit Entities”, see 27 Colo. Law. 5 (April 1998); for article, “Sales and Use Tax Consequences of Reorganizations, Separations, and Acquisitions”, see 32 Colo. Law. 81 (May 2003).

PART 1			
SALES TAX			
39-26-101.	Short title.	39-26-105.5.	tion of address - dealer held harmless.
39-26-102.	Definitions.	39-26-106.	Remittance of sales taxes - mandatory electronic funds transfers.
39-26-102.5.	Change of references from “Internal Revenue Code of 1954” to “Internal Revenue Code of 1986”.	39-26-107.	Schedule of sales tax.
39-26-103.	Licenses - fee - revocation.	39-26-108.	Rules and regulations.
39-26-103.5.	Qualified purchaser - direct payment permit number - qualifications.	39-26-109.	Tax cannot be absorbed.
39-26-104.	Property and services taxed.	39-26-110.	Reports of vendor.
39-26-105.	Vendor liable for tax - repeal.	39-26-111.	Retailer - multiple locations.
39-26-105.3.	Remittance of tax - electronic database - vendor held harmless.	39-26-112.	Credit sales.
39-26-105.4.	Remittance of tax - determina-	39-26-113.	Excess tax - remittance.
		39-26-113.5.	Collection of sales tax - motor vehicles - exemption.
		39-26-114.	Refund of state sales taxes for vehicles used in interstate commerce - fund.
			Exemptions - disputes - credits or refunds - definitions - creation of fund. (Repealed)

- 39-26-115. Deficiency due to negligence.
- 39-26-116. Record of sales.
- 39-26-117. Tax lien - exemption from lien.
- 39-26-118. Recovery of taxes, penalty, and interest.
- 39-26-119. License and tax additional.
- 39-26-120. False or fraudulent return, statement - penalty.
- 39-26-121. Penalty.
- 39-26-122. Administration.
- 39-26-122.5. Collection of sales tax - enhanced efficiencies - inter-governmental agreements with local governments - legislative declaration.
- 39-26-123. Receipts - disposition - transfers of general fund surplus - sales tax holding fund - creation - definitions.
- 39-26-123.1. Credit of sales and use tax receipts to Colorado water conservation board construction fund - terminates July 1, 1982 - repeal. (Repealed)
- 39-26-124. Applicability to banks.
- 39-26-125. Limitations.
- 39-26-126. Legislative finding as to revenues for old age pension fund.
- 39-26-127. Legislation modifying the state sales tax base - no impact on local government sales tax bases - no expansion of local authority to levy sales tax.

PART 2

USE TAX

- 39-26-201. Definitions.
- 39-26-202. Authorization of tax.
- 39-26-203. Exemptions - definitions. (Repealed)
- 39-26-204. Periodic return - collection.
- 39-26-204.5. Remittance of tax - electronic database - retailer held harmless.
- 39-26-204.6. Remittance of tax - determination of address - motor vehicle dealer held harmless.
- 39-26-205. Tax constitutes lien - exemption from lien.
- 39-26-206. Failure to make return.
- 39-26-207. Penalty interest on unpaid tax.
- 39-26-208. Collection of use tax - motor vehicles.
- 39-26-209. Rules and regulations.
- 39-26-210. Limitations.
- 39-26-211. Applicability to banks.
- 39-26-212. Legislation modifying the state use tax base - no impact on

local government use tax bases - no expansion of local authority to levy use tax.

PART 3

SALES AND USE TAX - COLLECTION OF TAX BY OUT-OF-STATE RETAILERS

- 39-26-301 to 39-26-307. (Repealed)

PART 4

SALES AND USE TAX REFUND FOR BIOTECHNOLOGY, CLEAN TECHNOLOGY, AND MEDICAL DEVICES

- 39-26-401. Definitions.
- 39-26-402. Refund of state sales and use tax for biotechnology - application requirements and procedures.
- 39-26-403. Refund of state sales and use tax for clean technology and medical devices - application requirements and procedures - repeal.

PART 5

SALES AND USE TAX REFUND FOR POLLUTION CONTROL EQUIPMENT

- 39-26-501. Definitions. (Repealed)
- 39-26-502. Fiscal years commencing on or after July 1, 1999 - temporary refund of state sales and use tax paid for pollution control equipment to refund state revenues exceeding TABOR limit - application requirements and procedures - legislative declaration. (Repealed)

PART 6

SALES AND USE TAX REFUND FOR TANGIBLE PERSONAL PROPERTY USED FOR RESEARCH AND DEVELOPMENT

- 39-26-601. Definitions. (Repealed)
- 39-26-602. Fiscal years commencing on or after July 1, 2002 - temporary refund of state sales and use tax paid for tangible personal property used for research and development to refund state revenues exceeding TABOR limit - application requirements and procedures - legislative declaration. (Repealed)

PART 7

SALES AND USE TAX EXEMPTIONS

39-26-701.	Definitions.	39-26-711.5.	Aircraft - use outside state.
39-26-702.	Department of revenue - rules.	39-26-712.	Trailers and trucks.
39-26-703.	Disputes and refunds.	39-26-713.	Tangible personal property.
39-26-704.	Miscellaneous sales tax exemptions - governmental entities - hotel residents - schools - exchange of property.	39-26-714.	Vending machines - definitions.
		39-26-715.	Fuel and oil.
		39-26-716.	Agriculture and livestock - special fuels - definitions - repeal.
39-26-705.	Miscellaneous use tax exemptions - printers ink and newsprint - manufactured goods.	39-26-717.	Drugs and medical and therapeutic devices - definitions.
39-26-706.	Miscellaneous sales and use tax exemptions - cigarettes - internet access - refractory materials - precious metal bullion and coins.	39-26-718.	Charitable organizations - association or organization of parents and teachers of public school students.
		39-26-719.	Motor vehicles.
39-26-707.	Food, meals, and beverages - definitions.	39-26-720.	Bingo equipment.
39-26-708.	Construction and building materials.	39-26-721.	Manufactured homes.
39-26-709.	Machinery and machine tools.	39-26-722.	Cleanrooms - definitions - repeal.
39-26-710.	Railroads - construction and building materials - tangible personal property - work equipment - rolling stock.	39-26-723.	Colorado wood products - repeal.
		39-26-724.	Components used to produce energy from a renewable energy source - definitions.
39-26-711.	Aircraft - tangible personal property.	39-26-725.	Sales related to a school - definitions.
		39-26-726.	Medical marijuana - debilitating conditions and ability to purchase.

PART 1

SALES TAX

Cross references: For the use of a method in lieu of any required oath or affirmation by a person making any return or any application for refund or protest pursuant to this part 1, see § 24-12-108.

39-26-101. Short title. This article shall be known and may be cited as the "Emergency Retail Sales Tax Act of 1935".

Source: L. 35: p. 1000, § 1. CSA: C. 144, § 1. L. 37: p. 1075, § 1. CRS 53: § 138-6-1. C.R.S. 1963: § 138-5-1.

ANNOTATION

Law reviews. For article, "Colorado Sales and Use Tax Consequences in Sales of Businesses", see 11 Colo. Law. 679 (1982).

Article does not violate due process requirements in that the tax is imposed without notice or hearing to the taxpayer. *Sweeney Elec. Co. v. Poston*, 110 Colo. 139, 132 P.2d 443 (1942).

Taxes imposed by articles 20 to 28 of this title are excise levies. *Sweeney Elec. Co. v. Poston*, 110 Colo. 139, 132 P.2d 443 (1942).

Article is intended to impose tax upon that which is consumed and used and exempts only

that which is sold for resale. *Carpenter v. Carman Distrib. Co.*, 111 Colo. 566, 144 P.2d 770 (1943); *Palmer v. Perkins*, 119 Colo. 533, 205 P.2d 785 (1949).

Vendor not having a retail sales tax license is presumptively a user or consumer. This presumption, however, is a rebuttable one, and a vendor who would escape the tax has the burden of showing, be it before the department or in court, that the sales in fact are not subject to the retail sales tax. *Pluss v. Dept. of Rev.*, 173 Colo. 86, 476 P.2d 253 (1970).

39-26-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Agricultural commodity" means any agricultural commodity as defined in section 35-28-104 (1), C.R.S.; except that, for purposes of this article, "agricultural commodity" shall also include sugar beets, timber and timber products, oats, malting barley, barley, hops, rice, milo, and any other feed grain.

(1.3) "Auction sale" means any sale conducted or transacted at a permanent place of business operated by an auctioneer or a sale conducted and transacted at any location where tangible personal property is sold by an auctioneer when such auctioneer is acting either as agent for the owner of such personal property or is in fact the owner thereof. The auctioneer at any sale defined in subsection (11) of this section, except when acting as an agent for a duly licensed retailer or vendor or when selling only tangible personal property that is exempt under the provisions of section 39-26-716 (4) (a) and (4) (b), is a retailer or vendor as defined in subsection (8) of this section and the sale made by the auctioneer is a retail sale as defined in subsection (9) of this section, and the business conducted by said auctioneer in accomplishing such sale is the transaction of a business as defined by subsection (2) of this section.

(2) "Business" includes all activities engaged in or caused to be engaged in with the object of gain, benefit, or advantage, direct or indirect.

(2.5) "Charitable organization" means any entity organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office, or any veterans' organization registered under section 501 (c) (19) of the "Internal Revenue Code of 1986", as amended, for the purpose of sponsoring a special event, meeting, or other function in the state of Colorado so long as such event, meeting, or function is not part of such organization's regular activities in the state.

(2.6) "Coins" means monetized bullion or other forms of money manufactured from gold, silver, platinum, palladium, or other such metals now, in the future, or heretofore designated as a medium of exchange under the laws of this state, the United States, or any foreign nation.

(2.7) "Cooperative direct mail advertising" means advertising for one or more businesses which is in the form of discount coupons, advertising leaflets, or other printed advertising which are delivered by mail in a single package or bundle to potential customers of such businesses participating in such advertising.

(2.8) "Direct mail advertising materials" means discount coupons, advertising leaflets, and other printed advertising, including, but not limited to, accompanying envelopes and labels.

(3) "Doing business in this state" means the selling, leasing, or delivering in this state, or any activity in this state in connection with the selling, leasing, or delivering in this state, of tangible personal property by a retail sale as defined in this section, for use, storage, distribution, or consumption within this state. This term includes, but shall not be limited to, the following acts or methods of transacting business:

(a) The maintaining within this state, directly or indirectly or by a subsidiary, of an office, distributing house, salesroom or house, warehouse, or other place of business;

(b) (I) The soliciting, either by direct representatives, indirect representatives, manufacturers' agents, or by distribution of catalogues or other advertising, or by use of any communication media, or by use of the newspaper, radio, or television advertising media, or by any other means whatsoever, of business from persons residing in this state and by reason thereof receiving orders from, or selling or leasing tangible personal property to, such persons residing in this state for use, consumption, distribution, and storage for use or consumption in this state.

(II) Commencing March 1, 2010, if a retailer that does not collect Colorado sales tax is part of a controlled group of corporations, and that controlled group has a component member that is a retailer with physical presence in this state, the retailer that does not collect Colorado sales tax is presumed to be doing business in this state. For purposes of this subparagraph (II), "controlled group of corporations" has the same meaning as set forth in section 1563 (a) of the federal "Internal Revenue Code of 1986", as amended, and "component member" has the same meaning as set forth in section 1563 (b) of the federal "Internal Revenue Code of 1986", as amended. This presumption may be rebutted by proof that during the calendar year in question, the component member that is a retailer with physical presence in this state did not engage in any constitutionally sufficient solicitation in this state on behalf of the retailer that does not collect Colorado sales tax.

(4) "Farm close-out sale" means a sale by auction or private treaty of all tangible personal property of a farmer or rancher previously used by him in carrying on his farming or ranching operations. Unless said farmer or rancher is making or attempting to make full and final disposition of all property used in his farming or ranching operations and is abandoning the said operations on the premises whereon they were previously conducted, such sale shall not be deemed a "farm close-out sale" within the meaning of this article.

(4.5) (a) "Food" means food for domestic home consumption as defined in 7 U.S.C. sec. 2012 (k), as amended, for purposes of the federal food stamp program, or any successor program, as defined in 7 U.S.C. sec. 2012 (l), as amended; except that "food" does not include carbonated water marketed in containers; chewing gum; seeds and plants to grow foods; prepared salads and salad bars; packaged and unpackaged cold sandwiches; deli trays; and hot or cold beverages served in unsealed containers or cups that are vended by or through machines or non-coin-operated coin-collecting food and snack devices on behalf of a vendor.

(b) In determining whether a food product is for domestic home consumption, unless the vendor is described in section 39-26-104 (1) (e), no inference shall be drawn from the type of vendor selling the product, the location of the product within a store, or the manner in which the product is marketed.

(5) "Gross taxable sales" means the total amount received in money, credits, or property, excluding the fair market value of exchanged property which is to be sold thereafter in the usual course of the retailer's business, or other consideration valued in money from sales and purchases at retail within this state, and embraced within the provisions of this article. The taxpayer may take credit in this report of gross sales for an amount equal to the sale price of property returned by the purchaser when the full sale price thereof is refunded whether in cash or by credit. The fair market value of any exchanged property which is to be sold thereafter in the usual course of the retailer's business, if included in the full price of a new article, shall be excluded from the gross sales. On all sales at retail, valued in money, when such sales are made under conditional sales contract, or under other forms of sale where the payment of the principal sum thereunder is extended over a period longer than sixty days from the date of sale thereof, only such portion of the sale amount thereof may be counted for the purpose of imposition of the tax imposed by this article as has actually been received in cash by the taxpayer during the period for which the tax imposed by this article is due and payable. Taxes paid on gross sales represented by accounts found to be worthless and actually charged off for income tax purposes may be credited upon a subsequent payment of the tax provided in this article, but if any such accounts are thereafter collected by the taxpayer, a tax shall be paid upon the amounts so collected.

(5.5) "Livestock" means cattle, horses, mules, burros, sheep, lambs, poultry, swine, ostrich, llama, alpaca, and goats, regardless of use, and any other animal which is raised primarily for food, fiber, or hide production. "Livestock" shall also mean "alternative livestock" as defined under section 35-41.5-102, C.R.S. "Livestock" shall not mean a pet animal as defined under section 35-80-102 (10), C.R.S.

(5.7) "Livestock production facility" means any structure used predominately for the housing, containing, sheltering, or feeding of livestock, including, without limitation, barns, corrals, feedlots, and swine houses.

(5.8) "Medical marijuana" shall have the same meaning as set forth in section 12-43.3-104 (7), C.R.S.

(6) "Person" includes any individual, firm, limited liability company, partnership, joint venture, corporation, estate, or trust or any group or combination acting as a unit, and the plural as well as the singular number.

(6.5) "Precious metal bullion" means any precious metal, including, but not limited to, gold, silver, platinum, and palladium, that has been put through a process of refining and is in such a state or condition that its value depends upon its precious metal content and not its form.

(6.7) "Pre-press preparation printing materials" means those tangible products converted to use for a specific print job that are subsequently saved but can only be reused for that same print client on rerun. Title to such pre-press preparation printing materials must pass to an independent customer with the sale of the printed materials, and they must be reusable for their original purpose or a similar purpose after the press run. Examples of "pre-press preparation printing materials" include, but are not limited to, photos, color keys, dies, engravings, light sensitive film or paper, masking sheets of any material, plates, rotogravure cylinders, and proofing samples of any material. No disposable materials or materials consumed to a significant degree are pre-press preparation printing materials for the purposes of this article. Examples of disposable or consumable materials include, but are not limited to, tape, alcohol, glues, adhesives, washes, silicon solutions, pens, markers, and cleaners.

(6.8) "Public school" means a public school of a school district in this state or an institute charter school.

(7) (a) "Purchase price" means the price to the consumer, exclusive of any direct tax imposed by the federal government or by this article, and, in the case of all retail sales involving the exchange of property, also exclusive of the fair market value of the property exchanged at the time and place of the exchange, if:

(I) Such exchanged property is to be sold thereafter in the usual course of the retailer's business; or

(II) Such exchanged property is a vehicle and is exchanged for another vehicle and both vehicles are subject to licensing, registration, or certification under the laws of this state, including, but not limited to, vehicles operating upon public highways, off-highway recreation vehicles, watercraft, and aircraft.

(b) In the case of the sale or transfer of wireless telecommunication equipment as an inducement to a consumer to enter into or continue a contract for telecommunication services that are taxable pursuant to this part 1, "purchase price" means and shall be limited to the monetary amount paid by the consumer and shall not reflect any sales commission or other compensation received by the retailer as a result of the consumer entering into or continuing a contract for such telecommunication services. Nothing in this paragraph (b) shall be construed to define "purchase price" as it applies to the amount a retailer collects from a consumer who defaults or terminates a contract for telecommunication services.

(c) With respect to the purchase price of a heavy truck, trailer, or tractor, the price to the consumer shall also be exclusive of the federal excise tax on the first retail sale of the heavy truck, trailer, or tractor for which the retailer is liable.

(7.5) "Qualified purchaser" means a person domiciled in Colorado who has been issued a direct payment permit number pursuant to section 39-26-103.5.

(8) "Retailer" or "vendor" means a person doing business in this state, known to the trade and public as such, and selling to the user or consumer, and not for resale.

(9) "Retail sale" includes all sales made within the state except wholesale sales.

(10) "Sale" or "sale and purchase" includes installment and credit sales and the exchange of property as well as the sale thereof for money; every such transaction, conditional or otherwise, for a consideration, constituting a sale; and the sale or furnishing of electrical energy, gas, steam, telephone, or telegraph services taxable under the terms of this article. Neither term includes:

(a) A division of partnership or limited liability company assets among the partners or limited liability company members according to their interests in the partnership or limited liability company;

(b) The formation of a corporation by the owners of a business and the transfer of their business assets to the corporation in exchange for all the corporation's outstanding stock, except qualifying shares, in proportion to the assets contributed;

(c) The transfer of assets of shareholders in the formation or dissolution of professional corporations;

(d) The dissolution and the pro rata distribution of the corporation's assets to its stockholders;

(e) The transfer of assets from a parent corporation to a subsidiary corporation or corporations which are owned at least eighty percent by the parent corporation, which transfer is solely in exchange for stock or securities of the subsidiary corporation;

(f) The transfer of assets from a subsidiary corporation or corporations which are owned at least eighty percent by the parent corporation to a parent corporation or to another subsidiary which is owned at least eighty percent by the parent corporation, which transfer is solely in exchange for stock or securities of the parent corporation or the subsidiary which received the assets;

(g) A transfer of a limited liability company or partnership interest;

(h) The transfer in a reorganization qualifying under section 368 (a) (1) of the "Internal Revenue Code of 1986", as amended;

(i) The formation of a limited liability company or partnership by the transfer of assets to the limited liability company or partnership or transfers to a limited liability company or partnership in exchange for proportionate interests in the limited liability company or partnership;

(j) The repossession of personal property by a chattel mortgage holder or foreclosure by a lienholder;

(k) The transfer of assets between parent and closely held subsidiary corporations, or between subsidiary corporations closely held by the same parent corporation, or between corporations which are owned by the same shareholders in identical percentage of stock ownership amounts, computed on a share-by-share basis, when a tax imposed by this article was paid by the transferor corporation at the time it acquired such assets, except to the extent provided by subsection (12) of this section. For the purposes of this paragraph (k), a closely held subsidiary corporation is one in which the parent corporation owns stock possessing at least eighty percent of the total combined voting power of all classes of stock entitled to vote and owns at least eighty percent of the total number of shares of all other classes of stock.

(11) "Sale" or "sale and purchase", in addition to the items included in subsection (10) of this section, includes the transaction of furnishing rooms or accommodations by any person, partnership, limited liability company, association, corporation, estate, receiver, trustee, assignee, lessee, or person acting in a representative capacity or any other combination of individuals by whatever name known to a person who for a consideration uses, possesses, or has the right to use or possess any room in a hotel, apartment hotel, lodging house, motor hotel, guesthouse, guest ranch, trailer coach, mobile home, auto camp, or trailer court and park, under any concession, permit, right of access, license to use, or other agreement, or otherwise.

(12) Except as otherwise provided in this subsection (12), the sales tax is imposed on the full purchase price of articles sold after manufacture or after having been made to order and includes the full purchase price for material used and the service performed in connection therewith, excluding, however, such articles as are otherwise exempted in this article. In connection with the transactions referred to in paragraph (k) of subsection (10) of this section, the sales tax is imposed only on the amount of any increase in the fair market value of such assets resulting from the manufacturing, fabricating, or physical changing of the assets by the transferor corporation. Except as otherwise provided in this subsection (12), the sales price is the gross value of all materials, labor, and service, and the profit thereon, included in the price charged to the user or consumer.

(13) "School" means an educational institution having a curriculum comparable to grade, grammar, junior high, high school, or college, or any combination thereof, requiring daily attendance, having an enrollment of at least forty students, and charging a tuition fee.

(13.5) (Deleted by amendment, L. 2011, (HB 11-1293), ch. 299, p. 1437, § 4, effective July 1, 2012.)

(14) “State treasurer” or “treasurer” means the state treasurer of the state of Colorado.

(15) (a) (I) “Tangible personal property” means corporeal personal property. The term shall not be construed to include newspapers, as legally defined by section 24-70-102, C.R.S., preprinted newspaper supplements that become attached to or inserted in and distributed with such newspapers, or direct mail advertising materials that are distributed in Colorado by any person engaged solely and exclusively in the business of providing cooperative direct mail advertising; except that, commencing March 1, 2010, for purposes of the state sales or use tax, “tangible personal property” shall include direct mail advertising materials that are distributed in Colorado by any person engaged solely and exclusively in the business of providing cooperative direct mail advertising.

(II) No funding received from revenues received as a result of the passage of House Bill 10-1189, enacted in 2010, shall be used to fund additional full-time equivalent state employees.

(b) (Deleted by amendment, L. 2011, (HB 11-1293), ch. 299, p. 1437, § 4, effective July 1, 2012.)

(c) (I) “Tangible personal property”, commencing July 1, 2012, shall include computer software if the computer software meets all of the following criteria:

(A) The computer software is prepackaged for repeated sale or license;

(B) The use of the computer software is governed by a tear-open nonnegotiable license agreement; and

(C) The computer software is delivered to the customer in a tangible medium. Computer software is not delivered to the customer in a tangible medium if it is provided through an application service provider, delivered by electronic computer software delivery, or transferred by load and leave computer software delivery.

(II) As used in this paragraph (c), unless the context otherwise requires:

(A) “Application service provider” or “ASP” means an entity that retains custody over or hosts computer software for use by third parties. Users of the computer software hosted by an ASP typically will access the computer software via the internet. The ASP may or may not own or license the computer software, but generally will own and maintain hardware and networking equipment required for the user to access the computer software. Where the ASP owns the computer software, the ASP may charge the user a license fee for the computer software or a fee for maintaining the computer software or hardware used by its customer.

(B) “Computer software” means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.

(C) “Electronic computer software delivery” means computer software transferred by remote telecommunications to the purchaser’s computer, where the purchaser does not obtain possession of any tangible medium in the transaction.

(D) “Load and leave computer software delivery” means delivery of computer software to the purchaser by use of a tangible medium where the title to or possession of the tangible medium is not transferred to the purchaser, and where the computer software is manually loaded by the vendor, or the vendor’s representative, at the purchaser’s location.

(E) “Prepackaged for repeated sale or license” means computer software that is prepackaged for repeated sale or license in the same form to multiple users without modification, and is typically sold in a shrink-wrapped box.

(F) “Tangible medium” means a tape, disk, compact disc, card, or comparable physical medium.

(G) “Tear-open nonnegotiable license agreement” means a license agreement contained on or in the package, which by its terms becomes effective upon opening of the package and accepting the licensing agreement. “Tear-open nonnegotiable license agreement” does not include a written license agreement or contract signed by the licensor and the licensee.

(III) The internalized instruction code that controls the basic operations, such as arithmetic and logic, of the computer causing it to execute instructions contained in system programs is an integral part of the computer and is not normally accessible or modifiable

by the user. Such internalized instruction code is considered part of the hardware and considered tangible personal property that is taxable pursuant to section 39-26-104 (1) (a). The fact that the vendor does or does not charge separately for such code is immaterial.

(IV) If a retailer sells computer software to a Colorado purchaser that is considered tangible personal property taxable pursuant to section 39-26-104 (1) (a) and the Colorado purchaser pays the retailer for a quantity of computer software licenses with the intent to distribute the computer software to any of the purchaser's locations outside of Colorado, the measure of Colorado sales tax due is the total of the license fees associated only with the licenses that are actually used in Colorado. The Colorado purchaser shall provide a written statement to the retailer, attesting to the amount of the license fees associated with Colorado and with points outside of Colorado. The written statement shall relieve the retailer of any liability associated with the proration.

(16) "Tax" means either the tax payable by the purchaser of a commodity or service subject to tax, or the aggregate amount of taxes due from the vendor of such commodities or services during the period for which he is required to report his collections, as the context may require.

(17) "Taxpayer" means any person obligated to account to the executive director of the department of revenue for taxes collected or to be collected under the terms of this article.

(18) "Wholesaler" means a person doing a regularly organized wholesale or jobbing business, and known to the trade as such and selling to retail merchants, jobbers, dealers, or other wholesalers, for the purpose of resale.

(19) (a) "Wholesale sale" means a sale by wholesalers to retail merchants, jobbers, dealers, or other wholesalers for resale and does not include a sale by wholesalers to users or consumers not for resale, and the latter sales shall be deemed retail sales and subject to the provisions of this article.

(b) "Wholesale sale" includes sales of all pre-press preparation printing materials, as defined in subsection (6.7) of this section, that are used by a printer for a specific printing contract where the printed product is sold at retail to a customer accepting delivery within this state.

(c) (I) "Wholesale sale" includes sales of agricultural compounds and spray adjuvants to be consumed by, administered to, or otherwise used in caring for livestock and all sales of semen for agricultural or ranching purposes.

(II) For purposes of this paragraph (c), "agricultural compounds" means:

(A) Insecticides, fungicides, growth-regulating chemicals, enhancing compounds, vaccines, and hormones;

(B) Drugs, whether dispensed in accordance with a prescription or not, that are used for the prevention or treatment of disease or injury in livestock;

(C) Animal pharmaceuticals that have been approved by the food and drug administration.

(III) For purposes of this paragraph (c), "spray adjuvants" means products that are used to increase the effectiveness of a pesticide.

(d) "Wholesale sale" includes sales of pesticides that are registered by the commissioner of agriculture for use in the production of agricultural and livestock products pursuant to the "Pesticide Act", article 9 of title 35, C.R.S., and offered for sale by dealers licensed to sell such pesticides pursuant to section 35-9-115, C.R.S.

(20) (a) Sales to and purchases of tangible personal property by a person engaged in the business of manufacturing, compounding for sale, profit, or use, any article, substance, or commodity, which tangible personal property enters into the processing of or becomes an ingredient or component part of the product or service which is manufactured, compounded, or furnished, and the container, label, or the furnished shipping case thereof, shall be deemed to be wholesale sales and shall be exempt from taxation under this part 1.

(b) As used in paragraph (a) of this subsection (20) with regard to food products, tangible personal property enters into the processing of such products and is therefore exempt from taxation when:

(I) It is intended that such property become an integral or constituent part of a food product which is intended to be sold ultimately at retail for human consumption; or

(II) Such property, whether or not it becomes an integral or constituent part of a food product, is a chemical, solvent, agent, mold, skin casing, or other material; is used for the purpose of producing or inducing a chemical or physical change in a food product or is used for the purpose of placing a food product in a more marketable condition; and is directly utilized and consumed, dissipated, or destroyed, to the extent it is rendered unfit for further use, in the processing of a food product which is intended to be sold ultimately at retail for human consumption.

(21) (a) Sales and purchases of electricity, coal, gas, fuel oil, steam, coke, or nuclear fuel, for use in processing, manufacturing, mining, refining, irrigation, construction, telegraph, telephone, and radio communication, street and railroad transportation services, and all industrial uses, and newsprint and printer's ink for use by publishers of newspapers and commercial printers shall be deemed to be wholesale sales and shall be exempt from taxation under this part 1.

(b) Repealed.

(22) Should a dispute arise between the purchaser and seller as to whether or not any such sale is exempt from taxation, nevertheless the seller shall collect and the purchaser shall pay such tax, and the seller shall thereupon issue to the purchaser a receipt or certificate, on forms prescribed by the executive director of the department of revenue, showing the names of the seller and purchaser, the items purchased, the date, price, amount of tax paid, and a brief statement of the claim of exemption. The purchaser thereafter may apply to the said executive director for a refund of such taxes, and it is his duty to determine the question of exemption, subject to review by the courts, as provided in section 39-21-105. It is a misdemeanor, punishable as provided in this article, for any seller to fail to collect or purchaser to fail to pay the tax levied by this article and on sales on which exemption is disputed.

(23) Except as provided in section 39-26-713 (1) (a), when right to continuous possession or use for more than three years of any article of tangible personal property is granted under a lease or contract and such transfer of possession would be taxable if outright sale were made, such lease or contract shall be considered the sale of such article, and the tax shall be computed and paid by the vendor upon the rentals paid.

Source: L. 35: p. 1000, § 2. CSA: C. 144, § 2. L. 37: p. 1075, § 1. L. 41: p. 660, §§ 2, 3. L. 43: p. 538, §§ 1, 2. L. 45: p. 575, § 1. CRS 53: § 138-6-2. L. 59: p. 800, § 1. C.R.S. 1963: § 138-5-2. L. 64: p. 816, § 1. L. 67: p. 333, § 1. L. 69: p. 221, § 2. L. 71: p. 1262, § 1. L. 73: p. 241, § 23. L. 75: (11) amended, p. 1468, § 14, effective July 18. L. 76: (10) amended, p. 318, § 75, effective May 2. L. 77: (10) amended, p. 1821, § 1, effective June 3; (23) amended, p. 1823, § 1, effective July 15. L. 78: (2.5) added, p. 506, § 1, effective March 8; (10)(k) added and (12) amended, p. 510, §§ 1, 2, effective April 18; (7) amended, p. 508, § 1, effective July 1. L. 79: (4.5) added, p. 1427, § 6, effective July 3. L. 82: (20) and (21) amended, p. 568, § 1, effective July 1. L. 85: (15) amended, p. 1280, § 1, effective June 6. L. 87: (4.5) R&RE, p. 1463, § 2, effective October 1. L. 88: (4.5) amended, p. 1328, § 1, effective April 4; (10)(h) amended, p. 1326, § 3, effective April 6. L. 90: (2.6) and (2.7) added and (15) amended, p. 1742, § 1, effective April 3; (2.8) and (6.5) added, p. 1740, § 1, effective April 17; (6), (10)(a), (10)(g), (10)(i), and (11) amended, p. 457, § 40, effective April 18. L. 92: (6.7) added and (19) amended, p. 2256, § 1, effective May 27. L. 95: (21) amended, p. 1214, § 3, effective May 31. L. 96: (7) amended, p. 757, § 2, effective May 22. L. 97: (5.5) added, p. 370, § 1, effective July 1. L. 99: (2.5) amended, p. 1271, § 1, effective June 3; (2.6) and (6.5) RC&RE, p. 1297, § 1, effective June 3; (4.5) amended, p. 1355, § 2, effective January 1, 2000; (7.5) added, p. 10, § 1, effective January 1, 2000. L. 2000: (1) amended and (1.3) and (5.7) added, p. 548, § 2, effective July 1. L. 2004: (1.3) and (23) amended, p. 1044, § 15, effective July 1. L. 2008: (6.8) added, p. 972, § 2, effective September 1; (7)(c) added, p. 810, § 1, effective September 1. L. 2010: (3)(b) and (8) amended, (HB 10-1193), ch. 9, p. 54, § 1, effective February 24; (15) amended, (HB 10-1189), ch. 5, p. 38, § 1, effective February 24; (21) amended, (HB 10-1190), ch. 6, p. 41, § 1, effective February 24; (13.5) added and (15) amended, (HB 10-1192), ch. 8, p. 51, § 3, effective March 1; (5.8) added, (HB 10-1284), ch. 355, p. 1685, § 7, effective July 1. L. 2011: (4.5) amended, (HB

11-1303), ch. 264, p. 1175, § 93, effective August 10; (13.5) and (15) amended, (HB 11-1293), ch. 299, p. 1437, § 4, effective July 1, 2012. **L. 2012:** (4.5) amended, (SB 12-094), ch. 8, p. 22, § 1, effective July 1; (19) amended, (HB 12-1037), ch. 251, p. 1248, § 2, effective July 1.

Editor's note: (1) Subsections (2.6), (2.7), and (2.8) were enacted as (2.8), (2.6), and (2.7) in 1990 but were renumbered on revision in 1991 to put the definitions in alphabetical order.

(2) Subsections (2.6)(b) and (6.5)(b) provided for the repeal of subsections (2.6) and (6.5), respectively, effective April 17, 1995. (See L. 90, p. 1740.) Subsections (2.6) and (6.5) have subsequently been reenacted.

(3) Section 2 of chapter 288, Session Laws of Colorado 1990, provides that section 1 of the act amending subsection (15) shall be deemed to have remedied a defect in the prior law and shall not be construed to interfere with any vested right or contract. In view of the foregoing, the amendment to subsection (15) shall apply to any legal or administrative proceeding, whether commenced prior to, on, or after April 3, 1990.

(4) In 2008, the federal food stamp program was renamed the supplemental nutrition assistance program by Pub.L. 110-234 and Pub.L. 110-246. The term "food stamp program" has been retained in subsection (4.5) to maintain conformity with existing state law and programs.

(5) Amendments to subsection (15) by House Bill 10-1189 and House Bill 10-1192 were harmonized.

(6) Subsection (21)(b)(II) provided for the repeal of subsection (21)(b), effective July 1, 2012. (See L. 2010, p. 41.)

(7) Section 3 of chapter 8, Session Laws of Colorado 2012, provides that the act amending subsection (4.5) applies to sales of food occurring on or after July 1, 2012.

Cross references: For the legislative declaration contained in the 1996 act amending this section, see section 1 of chapter 160, Session Laws of Colorado 1996.

ANNOTATION

- I. General Consideration.
- II. Retail Sales.
- III. Wholesale Sales.

I. GENERAL CONSIDERATION.

Law reviews. For note, "The Validity of Colorado's New Chain Store Tax", see 7 Rocky Mt. L. Rev. 138 (1935). For note, "Doing Business in Colorado for Foreign Corporations: Service of Process, Qualification, Taxation", see 49 Den. L.J. 529 (1973). For article, "Recent Developments in Colorado Sales and Use Taxes", see 18 Colo. Law. 2101 (1989). For article, "Taxability of Delivery Services in Colorado Before and After A.D. Stores", see 31 Colo. Law. 97 (May 2002).

The unconstitutionality of Colorado's tax system prior to 1978 amendments. Matthews v. State Dept. of Rev., 193 Colo. 44, 562 P.2d 415 (1977).

Company not selling or leasing equipment not denied equal protection. The fact that a competing corporation, which purchased telephone equipment and leased it to its subscribers, did not pay any sales or use tax on the purchase did not mean that the imposition of the tax on a telephone company, which purchased equipment but did not sell or lease it to its subscribers, denied equal protection to the telephone company. Western Elec. Co. v. Weed, 185 Colo. 340, 524 P.2d 1369 (1974).

No limit to number of times merchandise subject to tax. There is no limit to the number of times a particular article of merchandise may be subject to a sales tax so long as it remains in the stream of commerce and passes through the regular channels of trade, and the dealer must collect the tax unless the property is exempt. Bedford v. Hartman Bros., 104 Colo. 190, 89 P.2d 584 (1939).

Resold automobile. Where an automobile dealer accepts a used car in part payment of a new one, he must collect the sales tax on the full price of the new car, and on disposing of the old one he also must collect the tax on the price for which it is sold. The collection of taxes in such a transaction does not constitute double taxation. Bedford v. Hartman Bros., 104 Colo. 190, 89 P.2d 584 (1939).

When a buyer at a public foreclosure sale receives a public trustee's certificate of purchase and subsequently assigns the certificate of purchase to a third party who had no interest in the property prior to the assignment, the assignment of the certificate constitutes a sale or sale and purchase of tangible personal property within the meaning of this section and is therefore a taxable event for sales tax purposes. The fact that the sale is subject to the redemption rights of the debtor and junior interest holders does not alter the character of the transaction at the time it occurred or its tax implications. Telluride Resort and Spa v. Colo.

Dept. of Rev., 20 P.3d 1212 (Colo. App. 2000), aff'd, 40 P.3d 1260 (Colo. 2002).

The definition of "charitable organization" in a municipal tax code lends itself to two conflicting plain-meaning interpretations. In the first interpretation, in order to be eligible for a sales and use tax exemption, both religious and nonreligious charitable organizations must meet strict guidelines; in the second, a distinction is made between religious and charitable organizations, and the guidelines apply only to those organizations whose functions are nonreligious in nature. The court is obligated to support the first interpretation so as to avoid invoking a violation of the establishment clause of the federal constitution. *Catholic Health Initiatives Colo. v. City of Pueblo*, 207 P.3d 812 (Colo. 2009).

"Person" construed. *Montgomery Ward & Co. v. State Dept. of Rev.*, 628 P.2d 85 (Colo. 1981).

The existence of many specific narrow exclusions from the definition of "sale" and "sale and purchase" is indication that the general assembly intended the scope of the tax to be very sweeping and all or virtually all encompassing. *Telluride Resort & Spa v. Colo. Dept. of Rev.*, 20 P.3d 1212 (Colo. App. 2000), aff'd, 40 P.3d 1260 (Colo. 2002).

The tax statutes, and in particular the narrow exception of subsection (10)(j), address whether the sale of land is a taxable event more specifically than the foreclosure and public trustee provisions and is consistent with the general assembly's statutory design and intent in regard to the differing purposes of the tax code and the foreclosure and public trustee provisions. *Telluride Resort & Spa v. Colo. Dept. of Rev.*, 40 P.3d 1260 (Colo. 2002).

Exclusion from "tangible personal property" includes property that loses its identity when it becomes an integral and inseparable part of realty and that is removable only with substantial damage to the premises. District court did not err in determining that sand used in oil and gas fracturing was not tangible personal property based on this exclusion. *Noble Energy v. Colo. Dept. of Rev.*, 232 P.3d 293 (Colo. App. 2010).

Electricity is tangible personal property for sales and use tax purposes. *Pub. Serv. Co. v. Dept. of Rev.*, ___ P.3d ___ (Colo. App. 2011).

II. RETAIL SALES.

Unlicensed seller involved in an isolated transaction is not a "vendor" or "retailer" within the meaning of this section and is not liable to the state for the payment of tax. *J. A. Tobin Constr. Co. v. Weed*, 158 Colo. 430, 407 P.2d 350 (1965).

Vendee pays tax to state if vendor not "retailer". The entire article clearly indicates a

legislative intent to impose a tax in the amount levied upon purchases of tangible personal property at retail, such tax to be either in the nature of an addition to the sales price and collected by the seller if he is a licensed "vendor", or a tax to be paid by the consumer when the seller of the merchandise is not a "retailer" or "vendor" as those terms are defined by this section. *J. A. Tobin Constr. Co. v. Weed*, 158 Colo. 430, 407 P.2d 350 (1965).

Vendee should not pay tax to unlicensed vendor. One who makes a purchase from a seller who does not hold a license as a "retailer" or "vendor" cannot with safety pay to the seller the amount of sales tax due. *J. A. Tobin Constr. Co. v. Weed*, 158 Colo. 430, 407 P.2d 350 (1965).

Contractors purchasing items to install deemed users and liable for tax. When painting and electrical contractors purchase items of personal property and build them into a structure as an integral part of their entire contract, and then dispose of the completed work to the owner, they are users and consumers and not "retailers" to the owner of each item, and they are liable for the sales tax. *Craftsman Painters & Decorators, Inc. v. Carpenter*, 111 Colo. 1, 137 P.2d 414 (1942).

Purchase of items, not resold, by a telephone company falls within "retail sales" definition. The purchase by a telephone company of instruments, apparatus, cable, wire, etc., which the company does not resell to its subscribers, falls within the definition of "retail sales" rather than "wholesale sales" for the purpose of the sales and use tax laws. *Western Elec. Co. v. Weed*, 185 Colo. 340, 524 P.2d 1369 (1974).

Characterization of transaction may be corrected from "wholesale" to "retail". Where the buyer's ultimate disposition of the item purchased cannot be known at the time of purchase, the transaction's tentative characterization as "wholesale" may be corrected to "retail" by considering later events. *Int'l. Bus. Machs. Corp. v. Charnes*, 198 Colo. 374, 601 P.2d 622 (1979).

In considering the meaning of statutory use tax exemption, the definitions of wholesale and retail sale established by the general assembly differ from the ordinarily accepted general conception of those terms. *Hirschfeld Press v. Denver*, 806 P.2d 917 (Colo. 1991).

III. WHOLESALE SALES.

"Container" exemption construed. Glass bottles purchased from bottle manufacturer are exempt, whether or not a bottle is returnable. *Weed v. Occhiato*, 175 Colo. 509, 488 P.2d 877 (1971).

A beer keg is exempt as a "container" regardless of the fact that it is continuously reused by

brewer and never sold or given away. *Adolph Coors Co. v. Charnes*, 690 P.2d 893 (Colo. App. 1984), aff'd, 724 P.2d 1341 (Colo. 1986).

Wholesale exemption depends entirely upon disposition of purchased product by buyer. The definitions of "wholesale sale" and "retail sale" are at variance with the generally accepted meanings of the terms "wholesale" and "retail". A purchaser may buy in large quantities what is commercially known as at "wholesale" and get wholesale prices and still the sale may not be exempt. Exemption depends entirely upon the disposition of a purchased product by the buyer. *Carpenter v. Carman Distrib. Co.*, 111 Colo. 566, 144 P.2d 770 (1943).

All sales which are not wholesale sales fall within category of retail sales, even though they are casual or isolated transactions. *Palmer v. Perkins*, 119 Colo. 533, 205 P.2d 785 (1949).

Purchase of laundry business not wholesale sale. The purchase of a laundry business, including all tangible and intangible property connected therewith, is deemed not to be a wholesale sale and is therefore within the category of retail sales. *Palmer v. Perkins*, 119 Colo. 533, 205 P.2d 785 (1949).

Neither is sale by wholesaler to driverless-car business owner. Under the provisions of subsections (9) and (19), the sale of an automobile by a wholesaler to the owner of a driverless-car business is a sale by a wholesaler to a user or consumer not for resale, and is therefore subject to a sales tax as a retail sale. The user and consumer of an automobile may be not only he who devotes it to his own personal use, but also he who, for hire, lends or leases it to a third person. *Herbertson v. Cruse*, 115 Colo. 274, 170 P.2d 531, 172 A.L.R. 1312 (1946).

Sales tax collected only on end transaction, not intermediate sales of items. The exemption from taxation by subsection (20) of the intermediate sales of items incorporated in a product finally sold in a finished form at retail not only was promulgated to avoid a pyramiding of sales taxes into the cost of the finished product, but also contemplated that a sales tax should be collected on the end transaction and that such should be the measure of the total imposition on the composited product. *Carpenter v. Carman Distrib. Co.*, 111 Colo. 566, 144 P.2d 770 (1943).

Mining operations not "manufacturing" and machinery and equipment purchased by mining company taxable. The mining operations of a corporation, even though the products thereof are devoted exclusively and necessarily to the manufacture of final products offered for sale by the company, is not "manufacturing" within the meaning of that term as used in this

and following sections, and any machinery and equipment purchased and used in the company's mining operations are taxable. *Bedford v. Colo. Fuel & Iron Corp.*, 102 Colo. 538, 81 P.2d 752 (1938).

Recapping of tires not manufacturing process. A recapper of tires does not sell his customers an article which was manufactured by him, and hence itself subject to the sales tax, but rather renders a service by repairing and restoring an article theretofore manufactured, and there is no sales tax collectible on "the end transaction" between the recapper and his customer; accordingly, to hold that recapping is a manufacturing process and that the materials entering into the processing are exempt from taxation, would be contrary to the intent of this section. *Zook v. Perkins*, 118 Colo. 464, 195 P.2d 962 (1948).

Packaging material used by laundry not exempt. The sale of wrapping paper, bags, etc., used to package the articles laundered or cleaned for return to customers are not exempted specifically. *Carpenter v. Carman Distrib. Co.*, 111 Colo. 566, 144 P.2d 770 (1943).

Test for determining whether purchase is purchase for resale is whether primary purpose of transaction is the acquisition of tangible personal property for resale in unaltered and basically unused condition. In making determination, court should consider: (1) Nature of purchaser's contractual obligations, if any, to alter or consume property to produce goods or perform services; (2) degree to which items purchased are essential to purchaser's performance of obligations; (3) degree to which purchaser controls manner items are used, altered, or consumed prior to transfer to third parties; (4) and degree to which form, character, and composition of items when transferred to third parties differs from form, character, and composition of items at time of initial purchase. *Colo. Springs v. Inv. Hotel Props.*, 806 P.2d 375 (Colo. 1991).

Property transferred to an out-of-state vendee without consideration for use outside the state in selling products qualifies for exemption even if vendee is ultimate consumer. *Scott's Liquid Gold-Inc. v. Charnes*, 772 P.2d 658 (Colo. App. 1989).

Purchase of hotel property located in guest rooms does not constitute wholesale sale. *Colo. Springs v. Inv. Hotel Props.*, 806 P.2d 375 (Colo. 1991).

In considering the meaning of statutory use tax exemption, the definitions of wholesale and retail sale established by the general assembly differ from the ordinarily accepted general conception of those terms. *Hirschfeld Press v. Denver*, 806 P.2d 917 (Colo. 1991).

39-26-102.5. Change of references from “Internal Revenue Code of 1954” to “Internal Revenue Code of 1986”. The change of references in this article from the “Internal Revenue Code of 1954” to the “Internal Revenue Code of 1986” shall not affect any act done or any right accrued or accruing before or after such change, but all rights and liabilities shall continue and may be enforced in the same manner as if such references had not been changed.

Source: L. 88: Entire section added, p. 1327, § 5, effective April 6.

39-26-103. Licenses - fee - revocation. (1) (a) Except as otherwise provided in sub-subparagraph (A) of subparagraph (IV) of paragraph (b.5) of subsection (9) of this section, it is unlawful for any person to engage in the business of selling at retail without first having obtained a license therefor, which license shall be granted and issued by the executive director of the department of revenue and shall be in force and effect until December 31 of the year following the year in which it is issued, unless sooner revoked. Such license shall be granted or renewed only upon application stating the name and address of the person desiring such a license, the name of such business and the location, including the street number of such business, and such other facts as the executive director may require.

(b) It is the duty of each such licensee on or before January 1 of the second year following the year in which his license is issued or renewed to obtain a renewal thereof if the licensee remains in retail business or liable to account for the tax provided in this part 1. Unless evidence is submitted to the contrary, any account for which a license has been issued which shows no retail sales activity for any period of twelve consecutive months shall not be renewed. Such inactivity shall be considered prima facie evidence that the licensee is not in the business of selling at retail.

(c) For each license issued, a fee of sixteen dollars shall be paid, which fee shall accompany the application together with an additional fifty-dollar deposit. A further fee of sixteen dollars shall be paid for each two-year period or fraction thereof for which said license is renewed. Payment of a fee for such a license issued after June 30 shall be prorated in increments of six months. The fifty-dollar deposit shall be allowed as a credit against the Colorado sales tax to be remitted. Except for licenses issued pursuant to paragraph (b) of subsection (9) of this section, all licenses issued pursuant to this section shall be renewed on a biennial basis, effective January 1, 1986.

(2) In case business is transacted at two or more separate places by one person, a separate license for each place of business shall be required.

(3) Each license shall be numbered and shall show the name, residence, and place and character of business of the licensee and shall be posted in a conspicuous place in the place of business for which it is issued. No license shall be transferable.

(4) The executive director, after reasonable notice and a full hearing, may revoke the license of any person found by him or her to have violated any provision of this article. Any person engaged in the business of selling at retail in this state without securing a license therefor commits a class 3 misdemeanor and shall be punished according to section 18-1.3-501, C.R.S. Any person who engages in the business of selling at retail in this state without a license may also be subject to a civil penalty of fifty dollars per day to a maximum penalty of one thousand dollars. Such penalty shall be assessed by the executive director or his or her authorized agent and shall be waived or reduced if such failure to obtain such license is due to reasonable cause and not willful neglect or intent to defraud.

(5) Any finding and order of the executive director revoking the license of any person shall be subject to review by the district court of the district where the business of the licensee is conducted, upon application of the aggrieved party. The procedure for review shall be, as nearly as possible, the same as provided for the review of findings as provided by proceedings in the nature of certiorari.

(6) No license shall be required for any person engaged exclusively in the business of selling commodities which are exempt from taxation under this part 1.

(7) It is the duty of the executive director, at the time of issuance of any new license for the business of selling at retail under this part 1, to notify the county treasurer of the county where the new licensee is located, of the name and address of the licensee.

(8) (a) Any person operating exclusively as a wholesaler may apply to the department of revenue for a license to engage in the business of selling at wholesale. The application shall state the name and address of the person applying for such license, the name and location of the person's business, including the street number of such business, and such other information as the executive director of the department of revenue may require.

(b) A person shall pay a fee of sixteen dollars for each license issued under this subsection (8). If the licensee remains in the wholesale business, the licensee shall renew such license on or before January 1 of the second year following the year of issuance or renewal, but nothing in this section shall be construed to empower the executive director to refuse such renewal except revocation for cause of the licensee's prior license. Payment of a fee for a license issued after June 30 of any year shall be prorated in increments of six months. All licenses issued shall be renewed on a biennial basis, effective January 1, 1986.

(9) (a) A person operating as a charitable organization, as defined in section 39-26-102 (2.5), may apply to the department of revenue for a license to engage in the business of selling at retail. The application shall state the name and address of the person applying for such license, the name and location of the person's organization, including the street number of such organization, and such other information as the executive director of the department of revenue may require.

(b) A person conducting a singular sales event may apply to the department of revenue for a license to engage in the business of selling at retail for a temporary period of time. The application shall state the name and address of the person applying for such license, the name and location of the person's organization, including the street number of such organization, and such other information as the executive director of the department of revenue may require.

(b.5) (I) A person engaged in retail sales at more than one special sales event in any two-year period may apply to the department of revenue for a license to engage in selling at retail at such special sales event over a two-year period. Such special sales event license shall only apply to retail sales made by the person to whom the license is issued at such special sales events and shall not apply to sales at such person's business location or to any other sales. The application for such license shall state the name and address of the person desiring such a license and such other information as the executive director of the department of revenue may require. Except as otherwise provided in sub-subparagraph (A) of subparagraph (IV) of this paragraph (b.5), a person to whom a special sales event license has been issued shall file a separate return and payment of sales taxes for each special sales event at which retail sales are made by such person, which return shall be filed on the twentieth day of the month following the month in which such special sales event began.

(II) Any person who organizes a special sales event shall inform each person making any retail sales at such special sales event of the various taxes and tax rates that apply to retail sales at the special sales event and shall mail to the department within ten days of the last day of such special sales event a list of the name, address, and special sales event license number, if any, of each person making any retail sales at the special sales event.

(III) For purposes of this paragraph (b.5), "special sales event" means an event where retail sales are made by more than three persons at a location other than their normal business location, which event occurs no more than three times in any calendar year.

(IV) (A) Any person engaged in retail sales at a special sales event shall obtain a special sales event license pursuant to the provisions of subparagraph (I) of this paragraph (b.5) unless the person who organizes such special sales event elects to obtain a special sales event license pursuant to sub-subparagraph (B) of this subparagraph (IV) and such person who engages in retail sales at such special sales event elects to remit such sales tax collected to the person who organized such special sales event. Any person engaged in retail sales at a special sales event who has obtained a special sales event license pursuant to the provisions of subparagraph (I) of this paragraph (b.5) may elect to remit sales tax collected at such special sales event to the person who organized such special sales event and to

whom a special sales event license has been issued pursuant to sub-subparagraph (B) of this subparagraph (IV).

(B) Any person who organizes a special sales event may apply to the department of revenue for a license for retail sales made at such special sales event. Such special sales event license shall only apply to retail sales made at such special sales event organized by the person to whom the license is issued and shall not apply to any other special sales events or sales. The application for such license shall state the name and address of the person desiring such a license and such other information as the executive director of the department of revenue may require. A person to whom a special sales event license has been issued pursuant to this sub-subparagraph (B) shall file a separate return and shall make payment of sales tax collected by persons making retail sales at such special sales event who have elected to remit such sales tax collections to the person licensed pursuant to the provisions of this sub-subparagraph (B). Such return shall be filed on the twentieth day of the month following the month in which such special sales event began. In addition to the information specified in subparagraph (II) of this paragraph (b.5), any person issued a special sales event license pursuant to this sub-subparagraph (B) shall maintain, at his place of business, a list showing the name and address of each person making any retail sales at such special sales event, the amount of gross retail sales made by such person at such special sales event, and the amount of sales tax collected by such person on such retail sales which are remitted by such licensee.

(c) A person who sells only products which are subject to city or county, but no state, sales tax may petition the department to waive the deposit established in paragraph (c) of subsection (I) of this section.

(d) An individual having an occasional or isolated sale of tangible personal property is not required to have a Colorado retail sales tax license. Such sales must be made from the private residences of such individuals, and the aggregate dollar amount of such sales may not exceed one thousand dollars for any one calendar year. In addition the following conditions must be met:

(I) Neither the seller nor any member of his household may be engaged in a trade or business where similar items are sold;

(II) An annual report of casual sales must be filed with the department by every individual making such sales, and the sales tax due must be remitted at the time the Colorado income tax return of such person is due as provided in article 22 of this title, on forms provided by the director, showing in detail all such sales made during the year; and

(III) All such returns shall be subscribed by the taxpayer or his agent and shall contain a written declaration that they are being made under the penalties of perjury in the second degree.

(e) In addition, when in the opinion of the executive director it is necessary for the efficient administration of this section to treat any salesman, representative, peddler, or canvasser as the agent of the vendor, distributor, supervisor, or employer under whom he operates or from whom he obtains tangible personal property sold by him or for whom he solicits business, the director may, in his discretion, treat such agent as the vendor jointly responsible with his principal, distributor, supervisor, or employer for the collection and payment over of the tax.

(f) Except as otherwise provided in this paragraph (f), a person shall pay a fee of eight dollars for each license issued under this subsection (9); except that a person shall pay a fee of sixteen dollars for a license issued or renewed under subparagraph (I) of paragraph (b.5) of this subsection (9). Any person to whom a sales tax license has been issued pursuant to paragraph (a) of subsection (I) of this section and to whom a special sales events license has been issued or renewed pursuant to paragraph (b.5) of this subsection (9) shall pay no fee for such new or renewed special sales events license. Payment of a fee for a license issued under paragraph (b.5) of this subsection (9) after June 30 of any year shall be prorated in increments of six months.

(10) Notwithstanding the amount specified for any fee in this section, the executive director of the department of revenue by rule or as otherwise provided by law may reduce the amount of one or more of the fees if necessary pursuant to section 24-75-402 (3), C.R.S., to reduce the uncommitted reserves of the fund to which all or any portion of one or more

of the fees is credited. After the uncommitted reserves of the fund are sufficiently reduced, the executive director of the department of revenue by rule or as otherwise provided by law may increase the amount of one or more of the fees as provided in section 24-75-402 (4), C.R.S.

Source: L. 35: p. 1004, § 3. CSA: C. 144, § 3. L. 37: p. 1079, § 1. CRS 53: § 138-6-3. C.R.S. 1963: § 138-5-3. L. 70: p. 391, § 6. L. 85: (1) and (4) amended and (8) and (9) added, p. 1281, § 1, effective January 1, 1986. L. 89: (9)(b.5) added and (9)(f) amended, p. 1514, § 1, effective May 21. L. 90: (1)(a), (9)(b.5)(I), and (9)(f) amended and (9)(b.5)(IV) added, p. 1726, § 15, effective May 1. L. 98: (10) added, p. 1347, § 83, effective June 1. L. 2002: (4) amended, p. 1558, § 353, effective October 1.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (4), see section 1 of chapter 318, Session Laws of Colorado 2002.

ANNOTATION

For unconstitutionality of Colorado's tax system prior to the 1978 amendments, see *Matthews v. State Dept. of Rev.*, 193 Colo. 44, 562 P.2d 415 (1977).

Licensed retailers or vendors, state has made them agents for collection. *J. A. Tobin Constr. Co. v. Weed*, 158 Colo. 430, 407 P.2d 350 (1965); *Dept. of Rev. v. Durango & Silverton Narrow Gauge R.R. Co.*, 989 P.2d 208 (Colo. App. 1999).

Payment to agents amounts to payment to state. The payment of the sales tax by the pur-

chaser to licensed retailers or vendors amounts to payment to the state. *J. A. Tobin Constr. Co. v. Weed*, 158 Colo. 430, 407 P.2d 350 (1965).

Payment to an unlicensed seller is not payment to the state and provides no protection against a demand by the state upon the purchaser for the payment of the sales tax. *J. A. Tobin Constr. Co. v. Weed*, 158 Colo. 430, 407 P.2d 350 (1965).

39-26-103.5. Qualified purchaser - direct payment permit number - qualifications.

(1) The executive director of the department of revenue may issue a direct payment permit number to any person that submits an application to the executive director demonstrating that:

(a) For the preceding twelve-month period, such person has purchased in Colorado in the aggregate at least seven million dollars of commodities, services, or tangible personal property that are subject to the tax imposed by this article. Purchases of commodities or tangible personal property to be erected upon or affixed to real property, including, but not limited to, building and construction materials and fixtures, shall be excluded from the aggregate total of purchases of commodities, services, or tangible personal property described in this paragraph (a).

(b) (I) Except as provided in subsection (2) of this section, if such person has been subject to the collection, remittance, or reporting requirements imposed by this article or any other article in this title administered by the department of revenue for the preceding three years, such person timely filed the required returns and timely remitted the tax shown due on such returns during said three-year period; or

(II) If such person has been subject to the collection, remittance, or reporting requirements imposed by this article or any other article in this title administered by the department of revenue for less than the three preceding years, for the period beginning on the date when such person became subject to such requirements, such person timely filed the required returns and timely remitted the tax shown due on such returns; and

(c) Such person has in place an accounting system, acceptable to the executive director of the department of revenue, that will enable the department to fully and accurately collect and allocate to municipalities, counties, and other local taxing entities all sales taxes that the department collects for such municipalities, counties, and other local taxing entities.

(2) The executive director may waive the requirements of paragraph (b) of subsection (1) of this section if the person submitting the application can show that any failure to

comply with such collection, remittance, or reporting requirements was due to reasonable cause.

(3) Nothing in subsection (1) of this section shall be construed to require that a person must be subject to the collection, remittance, or reporting requirements imposed by this article in order to obtain a direct payment permit number.

(4) A person shall become a qualified purchaser upon receipt of a direct payment permit number.

(5) A direct payment permit number shall be in force and effect until December 31 of the third year following the year in which it is issued, unless sooner revoked. Such permit number shall be granted or renewed only upon the filing of an application stating the information described in subsection (1) of this section.

(6) The executive director of the department of revenue may revoke the direct payment permit number of a qualified purchaser that has violated any provision of this article. The executive director shall give a notice of revocation to such qualified purchaser by first-class mail pursuant to section 39-21-105.5. Any such revocation may be appealed by the qualified purchaser within thirty days of receipt of the notice of revocation together with a request for a hearing on such revocation before the executive director or the executive director's designee. The executive director shall promulgate rules specifying the procedures for a revocation appeal hearing. A revocation appeal hearing shall take place within a reasonable time after receipt of the request for hearing by the executive director. The executive director shall issue a finding upholding the revocation or reinstating the direct payment permit number within a reasonable time after the revocation appeal hearing.

Source: L. 99: Entire section added, p. 10, § 2, effective January 1, 2000.

39-26-104. Property and services taxed. (1) There is levied and there shall be collected and paid a tax in the amount stated in section 39-26-106 as follows:

(a) On the purchase price paid or charged upon all sales and purchases of tangible personal property at retail;

(b) (I) In the case of retail sales involving the exchange of property, on the purchase price paid or charged, including the fair market value of the property exchanged at the time and place of the exchange, excluding, however, from the consideration or purchase price, the fair market value of the exchanged property if:

(A) Such exchanged property is to be sold thereafter in the usual course of the retailer's business; or

(B) Such exchanged property is a vehicle and is exchanged for another vehicle and both vehicles are subject to licensing, registration, or certification under the laws of this state, including, but not limited to, vehicles operating upon public highways, off-highway recreation vehicles, watercraft, and aircraft.

(II) The exchange of three or more vehicles of the same type by any person in any calendar year in transactions subject to the provisions of this article shall be prima facie evidence that such person is engaged in the business of selling vehicles of the type involved in such transactions and that he is thereby subject to any licensing requirements necessary to engage in such activity.

(c) (I) Upon telephone and telegraph services, whether furnished by public or private corporations or enterprises for all intrastate telephone and telegraph service. On or after August 1, 2002, mobile telecommunications service shall be subject to the tax imposed by this section only if the service is provided to a customer whose place of primary use is within Colorado and the service originates and terminates within the same state. In accordance with the "Mobile Telecommunications Sourcing Act", 4 U.S.C. secs. 116 to 126, as amended, on or after August 1, 2002, mobile telecommunications service provided to a customer whose place of primary use is outside the borders of the state of Colorado is exempt from the tax imposed by this section.

(II) (A) If a customer believes that a tax, charge, or fee assessed by the state in the customer's bill for a mobile telecommunications service is erroneous, or that an assignment of place of primary use or taxing jurisdiction on said bill is incorrect, the customer shall notify the home service provider in writing within two years after the date the bill was

issued. The notification from the customer shall include the street address for the customer's place of primary use, the account name and number for which the customer seeks a correction, a description of the alleged error, and any other information that the home service provider may require.

(B) No later than sixty days after receipt of notice from a customer pursuant to sub-paragraph (A) of this subparagraph (II), the home service provider shall review the information submitted by the customer and any other relevant information and documentation to determine whether an error was made. If the home service provider determines that an error was made, the home service provider shall refund or credit to the customer any tax, fee, or charge erroneously collected from the customer for a period not to exceed two years. If the home service provider determines that no error was made, the home service provider shall provide a written explanation of its determination to the customer.

(C) Any customer that believes a tax, charge, or fee assessed by the state in the customer's bill for mobile telecommunications services is erroneous, or that an assignment of place of primary use or taxing jurisdiction on said bill is incorrect, may file a claim in the appropriate district court only after complying with the provisions of this subparagraph (II).

(III) As used in this paragraph (c), unless the context otherwise requires:

(A) "Act" means the federal "Mobile Telecommunications Sourcing Act", 4 U.S.C. secs. 116 to 126, as amended.

(B) "Customer" means customer as defined in section 124 (2) of the act.

(C) "Home service provider" means home service provider as defined in section 124 (5) of the act.

(D) "Mobile telecommunications service" means mobile telecommunications service as defined in section 124 (7) of the act.

(E) "Place of primary use" means the place of primary use as defined in section 124 (8) of the act.

(F) "Taxing jurisdiction" means taxing jurisdiction as defined in section 124 (12) of the act.

(IV) For telephone and telegraph services provided on or after July 1, 2003, when nontaxable services are aggregated with and not separately stated from taxable services, the provider of such services shall collect the tax imposed by this article only on intrastate telephone and telegraph services. The provider of such services shall maintain for three years documentation of the services provided that are taxable and nontaxable. Such documentation is subject to audit, and the service provider shall be liable for any uncollected tax. A service provider shall notify the executive director of the department of revenue of the percentages of taxable and nontaxable services in a package of aggregated services within thirty days of use on any invoice.

(d) Repealed.

(d.1) Effective July 1, 1980, for gas and electric service, whether furnished by municipal, public, or private corporations or enterprises, for gas and electricity furnished and sold for commercial consumption and not for resale, upon steam when consumed or used by the purchaser and not resold in original form whether furnished or sold by municipal, public, or private corporations or enterprises;

(d.2) Repealed.

(e) Upon the amount paid for food or drink served or furnished in or by restaurants, cafes, lunch counters, cafeterias, hotels, social clubs, nightclubs, cabarets, resorts, snack bars, caterers, carryout shops, and other like places of business at which prepared food or drink is regularly sold, including sales from pushcarts, motor vehicles, and other mobile facilities. Cover charges shall be included as part of the amount paid for such food or drink. However, meals provided to employees of the places mentioned in this paragraph (e) at no charge or at a reduced charge shall be exempt from taxation under the provisions of this part 1.

(f) On the entire amount charged to any person for rooms or accommodations as designated in section 39-26-102 (11).

Source: L. 35: p. 1005, § 4. CSA: C. 144, § 4. L. 37: p. 1081, § 1. L. 41: p. 661, § 4. L. 45: pp. 573, 578, §§ 1, 1. CRS 53: § 138-6-4. L. 59: p. 800, § 2. C.R.S. 1963: § 138-5-4. L. 64: p. 817, § 2. L. 78: (1)(e) amended, p. 512, § 1, effective May 5; (1)(b) amended, p. 508, § 2, effective July 1. L. 79: (1)(d) amended, (1)(d.1) and (1)(d.2) added, and (1)(e) R&RE, pp. 1428, 1440, §§ 7, 25, effective July 3. L. 80: (1)(d.1) and (1)(d.2) amended, p. 733, § 3, effective May 2. L. 82: (1)(d.1) amended and (1)(d.2) repealed, pp. 571, 572, §§ 1, 4, effective April 27. L. 2002: (1)(c) amended, p. 253, § 4, effective April 12. L. 2003: (1)(c)(IV) added, p. 2580, § 1, effective June 5. L. 2009: (1)(e) amended, (SB 09-121), ch. 421, p. 2338, § 1, effective June 4. L. 2012: (1)(e) amended, (SB 12-094), ch. 8, p. 23, § 2, effective July 1.

Editor's note: (1) Subsection (1)(d) provided for the repeal of subsection (1)(d), effective July 1, 1980. (See L. 79, p. 1440.)

(2) Section 3 of chapter 8, Session Laws of Colorado 2012, provides that the act amending subsection (1)(e) applies to sales of food occurring on or after July 1, 2012.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (1)(c), see section 1 of chapter 92, Session Laws of Colorado 2002.

ANNOTATION

Law reviews. For article, "Colorado Sales and Use Tax Consequences in Sales of Businesses", see 11 Colo. Law. 679 (1982). For article, "Recent Developments in Colorado Sales and Use Taxes", see 18 Colo. Law. 2101 (1989). For article, "Taxability of Delivery Services in Colorado Before and After A.D. Stores", see 31 Colo. Law. 97 (May 2002). For article, "The Taxability of Computer Software in Colorado", see 32 Colo. Law. 91 (December 2003). For article, "The Taxability of Mixed Transactions in Colorado", see 33 Colo. Law. 79 (March 2004).

Denial of such credit in computing use tax unconstitutional. It was constitutionally impermissible for the Colorado taxing authorities to deny a trade-in allowance in computing the use tax on a motor vehicle purchased outside the state when such a credit was allowed when the vehicle was purchased in Colorado. Such unequal treatment was discriminatory and constituted an impermissible burden on interstate commerce. *Matthews v. State Dept. of Rev.*, 193 Colo. 44, 562 P.2d 415 (1977).

Obligation for the payment of the tax is upon the consumer whether the tax is called a "sales" tax or a "use" tax. *J. A. Tobin Constr. Co. v. Weed*, 158 Colo. 430, 407 P.2d 350 (1965).

Use tax is supplementary to the sales tax. *Matthews v. State Dept. of Rev.*, 193 Colo. 44, 562 P.2d 415 (1977).

There was no credit for property exchanged outside state prior to 1978 amendments. *Matthews v. State Dept. of Rev.*, 193 Colo. 44, 562 P.2d 415 (1977).

Subsection (1)(e) intended to impose tax upon food of public-oriented commercial establishments. The nature of the various facilities enumerated in subsection (1)(e) suggests a

legislative intent to impose a tax upon meals or food sold by public-oriented commercial establishments, since all the businesses specifically designated as being subject to the tax are establishments ordinarily commercial in nature. *Colo. Coll. v. Heckers*, 33 Colo. App. 219, 517 P.2d 419 (1973).

Company cafeterias subject to tax. Where company operates cafeterias wherein persons numbering approximately 10,000 might, but need not, patronize the cafeterias, the cafeterias are subject to the tax levied by this section. *Bennetts v. Carpenter*, 111 Colo. 63, 137 P.2d 780 (1943) (decided prior to 1978 amendment).

College snack bars or student unions. Subsection (1)(e) does not operate to levy a sales tax upon meals or food sold by private colleges in their snack bars or student unions. *Colo. Coll. v. Heckers*, 33 Colo. App. 219, 517 P.2d 419 (1973).

Nonprofit lodges. Where a lodge is noncommercial and nonprofit and food service is incidental to its primary activities of furthering charitable and educational purposes and is not for pecuniary gain, and, except for rare occasions, the lodge is closed to nonmembers, this section does not apply to its food sales. *B.P.O.E. Lodge No. 804 v. State Dept. of Rev.*, 41 Colo. App. 88, 582 P.2d 1068 (1978).

There is a strong presumption that taxation is the rule and exemption the rare exception. *Southwest Catholic Credit Union v. Charnes*, 665 P.2d 626 (Colo. App. 1982); *Colo. Dept. of Rev. v. Woodmen of the World*, 919 P.2d 806 (Colo. 1996); *A.D. Store Co., Inc. v. Executive Dir. of Dept. of Rev.*, 997 P.2d 1241 (Colo. App. 1999), rev'd on other grounds, 19 P.3d 680 (Colo. 2001).

However, when interpreting a statute, the court must honor the plain meaning of the words

when they are clear, and must begin with the proposition that the purchase of personal services is generally not subject to taxation in Colorado; rather, Colorado taxes the purchase of tangible personal property valued at its sales price. *A.D. Store Co., Inc. v. Executive Dir. of Dept. of Rev.*, 19 P.3d 680 (Colo. 2001).

No exemption for state chartered credit unions. No exemption as to payment of sales taxes is provided to state chartered credit unions. *Southwest Catholic Credit Union v. Charnes*, 665 P.2d 626 (Colo. App. 1982).

Sales tax may be imposed on sale of cocaine by drug dealer if the sale is construed as a retail, rather than wholesale, transaction. *Eggleston v. Colo.*, 636 F. Supp. 1312 (D. Colo. 1986).

Access services for interstate telephone calls are taxable as intrastate telephone services. Since access services are provided by facilities, equipment, and personnel which are all located entirely within the state of Colorado, they are intrastate in nature and are subject to sales tax in Colorado. *AT & T Com. v. Dept. of Rev.*, 778 P.2d 677 (Colo. 1989).

Personal property which loses its identity when it becomes an integral and inseparable part of realty is not tangible personal property subject to taxation under this section. *Raynor Door, Inc. v. Charnes*, 765 P.2d 650 (Colo. App. 1988); *Noble Energy v. Colo. Dept. of Rev.*, 232 P.3d 293 (Colo. App. 2010).

The sales tax statute and applicable regulations provide that no service is taxable except those services specifically listed in the statute itself, and services rendered in "installing" or "applying" personal property are not taxable. Alteration services rendered in connection with the sale of a garment are separable from the purchase transaction and are not independently taxable. *A.D. Store Co., Inc. v. Executive Dir. of Dept. of Rev.*, 19 P.3d 680 (Colo. 2001).

When mixed transaction combining delivery of services and tangible personal property cannot be meaningfully separated, taxability is based on "true object" of the transaction. *Noble Energy v. Colo. Dept. of Rev.*, 232 P.3d 293 (Colo. App. 2010).

Factors to determine the "true object" of a mixed transaction are: (1) The value of the tangible property compared to that of the service; (2) whether there was an alternative method of transfer; (3) the length of time the intangible property provided retains its value; (4) constraints on the buyer's ability to use the tangible property; (5) what is actually done with the tangible property after it has yielded its intangible component; (6) whether the tangible property represents the finished product sought by the buyer; and (7) the skill and expertise used to create the tangible property. *City of Boulder v. Leanin' Tree, Inc.*, 72 P.3d 361 (Colo. 2003); *Noble Energy v. Colo. Dept. of Rev.*, 232 P.3d 293 (Colo. App. 2010).

Fracturing of oil and gas wells involved services and products that were inseparable. Applying these factors, the "true object" of the transaction is to provide a service to the taxpayer, not the sale of tangible personal property. Accordingly, the transaction was exempt from the sales tax. *Noble Energy v. Colo. Dept. of Rev.*, 232 P.3d 293 (Colo. App. 2010).

General assembly intended for the qualifying "exchange" in subsection (1)(b) to transpire in a single transaction, in which one vehicle is transferred to another person or entity as all or part of the purchase price of another vehicle. Here, plaintiff chose to structure the purchase of the new automobile and sale of the old automobile as two distinct transactions, involving separate parties. The old vehicle was not directly transferred to a person or entity as part of the purchase price for the new vehicle and, therefore, plaintiff cannot qualify for the trade-in allowance credit under this section. *Sternal v. Fagan*, 989 P.2d. 200 (Colo. App. 1999).

When there are multiple transactions, each transaction at which an item is sold to a consumer at retail may be taxed under this section. Furthermore, this section fails to contain an exemption expressing legislative intent that the collected tax be retained against a taxpayer where the applicable tax was paid by another. In the absence of such an intent, court will not presume an exemption. *Sternal v. Fagan*, 989 P.2d. 200 (Colo. App. 1999).

39-26-105. Vendor liable for tax - repeal. (1) (a) Except as provided in paragraph (d) of this subsection (1), every retailer, also in this part 1 called "vendor", shall, irrespective of the provisions of section 39-26-106, be liable and responsible for the payment of an amount equivalent to three percent of all sales made prior to January 1, 2001, and two and ninety one-hundredths percent of all sales made on or after January 1, 2001, by the vendor of commodities or services as specified in section 39-26-104 and shall, before the twentieth day of each month, make a return to the executive director of the department of revenue for the preceding calendar month and remit an amount equivalent to said percentage on such sales to said executive director, less three and one-third percent of the sum so remitted for sales occurring prior to July 1, 2003, or on or after July 1, 2005, and less two and one-third percent of the sum so remitted for sales occurring on or after July 1, 2003, but before July 1, 2005, to cover the vendor's expense in the collection and remittance

of said tax; but, if any vendor is delinquent in remitting said tax, other than in unusual circumstances shown to the satisfaction of the executive director, the vendor shall not be allowed to retain any amounts to cover such vendor's expense in collecting and remitting said tax, and an amount equivalent to the said percentage, plus the amount of any local vendor expense that may be allowed by the local government to the vendor, shall be remitted to the executive director by any such delinquent vendor. Such returns of the taxpayer or the taxpayer's duly authorized agent shall contain such information and be made in such manner and upon such forms as the executive director shall prescribe. Any local vendor expense remitted to the executive director shall be deposited to the state general fund.

(b) The executive director may extend the time for making a return and paying the taxes due under such reasonable rules as the executive director may prescribe, but no such extension shall be for a greater period than is provided for in section 39-26-109.

(c) The burden of proving that any retailer is exempt from collecting the tax on any goods sold and paying the same to the executive director, or from making such returns, shall be on the retailer or vendor under such reasonable requirements of proof as the executive director may prescribe.

(d) A retailer or vendor who has received in good faith from a qualified purchaser a direct payment permit number issued pursuant to section 39-26-103.5 shall not be liable or responsible for the collection and remittance of the tax imposed by this article on any sale made to the qualified purchaser that is paid for directly from such qualified purchaser's funds and not the personal funds of any individual.

(e) Repealed.

(f) (I) Notwithstanding any other provision of this section:

(A) The amount retained by a vendor that is not allowed to file on a less frequent basis than monthly pursuant to section 39-26-109 to cover the vendor's expense in collecting and remitting tax pursuant to this section shall not exceed an amount equal to one and thirty-five one-hundredths percent of all sales tax reported on any return made on or after March 1, 2009, but prior to July 1, 2009. For any return made prior to April 1, 2009, a vendor shall not be liable for any interest or other penalty imposed as a result of an error made in connection with the imposition of a maximum amount of sales tax revenues that may be retained in accordance with the provisions of this sub-subparagraph (A).

(B) A vendor shall not retain any amount to cover the vendor's expense in collecting and remitting tax pursuant to this section on any return made on or after July 1, 2009, but prior to June 30, 2011. For any return made prior to August 1, 2009, a vendor shall not be liable for any interest or other penalty imposed as a result of an error made in connection with the elimination of the amount of sales tax revenues that may be retained in accordance with the provisions of this sub-subparagraph (B).

(C) If the September 2010 forecast prepared by the legislative council staff indicates sufficient revenues to fully fund a six percent increase in general fund spending for the 2010-11 state fiscal year, then the provisions of this subparagraph (I) shall not apply and the amount retained by a vendor to cover the vendor's expense in collecting and remitting tax shall be as provided in paragraph (a) of this subsection (1) for periods commencing on or after January 1, 2011.

(II) This paragraph (f) is repealed, effective December 31, 2013.

(g) (I) Notwithstanding any other provision of this section, the amount retained by a vendor to cover the vendor's expense in collecting and remitting tax pursuant to this section shall not exceed an amount equal to two and twenty-two one-hundredths percent of all sales tax reported on any return made on or after July 1, 2011, but prior to July 1, 2014.

(II) This paragraph (g) is repealed, effective December 31, 2016.

(2) Every retailer or vendor conducting a business in which the transaction between the vendor and the consumer consists of the supplying of tangible personal property and services in connection with the maintenance or servicing of same shall be required to pay the taxes levied under this article upon the full contract price, unless application is made to the executive director for permission to use a percentage basis of reporting the tangible personal property sold and the services supplied under such contract. The executive director is authorized to determine the percentage based upon the ratio of the tangible personal

property included in the consideration as it bears to the total of the consideration paid under said combination contract or sale which is subject to the sales tax levied under the provisions of this part 1. This section shall not be construed to include items upon which the sales tax is imposed on the full purchase price as designated in section 39-26-102 (12).

(3) (a) A qualified purchaser may provide a direct payment permit number to a vendor or retailer that is liable and responsible for collecting and remitting the tax imposed by this article on any sale made to the qualified purchaser. A qualified purchaser holding a direct payment permit number shall, before the twentieth day of each month subsequent to the month in which any sale to the qualified purchaser was made for which the qualified purchaser's direct payment permit number was used, make a return and remit directly to the executive director the amount of such tax owing on all such sales to the qualified purchaser made in the preceding month. Such returns of the qualified purchaser or duly authorized agent shall contain such information and be made in such manner and upon such forms as the executive director shall prescribe.

(b) From the amount of the tax required to be remitted pursuant to paragraph (a) of this subsection (3), a qualified purchaser shall be entitled to retain the amount specified in paragraph (a) of subsection (1) of this section that a vendor or retailer would otherwise be entitled to retain to cover the vendor's or retailer's expense in collecting and remitting the tax imposed by this article if the qualified purchaser had not provided a direct payment permit number to the vendor or retailer.

Source: L. 35: p. 1006, § 5. CSA: C. 144, § 5. L. 37: p. 1082, § 1. L. 45: p. 578, § 2. CRS 53: § 138-6-5. C.R.S. 1963: § 138-5-5. L. 64: p. 817, § 3. L. 65: p. 1122, § 1. L. 67: p. 523, § 1. L. 70: p. 395, § 1. L. 76: (1)(a) amended, p. 785, § 1, effective April 6. L. 89: (1)(a) amended, p. 1502, § 8, effective July 1, 1990. L. 99: (1) amended and (3) added, p. 12, § 3, effective January 1, 2000. L. 2000: (1)(a) amended and (1)(e) added, p. 1431, § 2, effective May 31. L. 2001: (1)(a) amended, p. 1280, § 56, effective June 5. L. 2003: (1)(a) and (1)(e) amended, p. 2635, § 1, effective June 5. L. 2009: (1)(f) added, (SB 09-212), ch. 3, p. 6, § 1, effective February 26; (1)(f)(I) amended, (SB 09-275), ch. 273, p. 1234, § 1, effective May 18. L. 2010: (1)(a) amended and (1)(e) repealed, (SB 10-212), ch. 412, pp. 2035, 2032, §§ 10, 1, effective July 1. L. 2011: (1)(g) added, (SB 11-223), ch. 154, p. 534, § 1, effective May 5.

ANNOTATION

Unconstitutionality of Colorado's tax system prior to 1978 amendments. Matthews v. State Dept. of Rev., 193 Colo. 44, 562 P.2d 415 (1977).

Licensed retailers or vendors, state makes them its agents for collection. J. A. Tobin Constr. Co. v. Weed, 158 Colo. 430, 407 P.2d 350 (1965); Dept. of Rev. v. Durango & Silverton Narrow Gauge R.R. Co., 989 P.2d 208 (Colo. App. 1999).

Payment to agents amounts to payment to state. Payment of the sales tax by the purchaser to licensed retailers or vendors amounts to payment to the state. J. A. Tobin Constr. Co. v. Weed, 158 Colo. 430, 407 P.2d 350 (1965).

Applied in Montgomery Ward & Co. v. State Dept. of Rev., 628 P.2d 85 (Colo. 1981).

39-26-105.3. Remittance of tax - electronic database - vendor held harmless.

(1) Any vendor that collects and remits sales tax to the department of revenue as provided by law may use an electronic database of state addresses that is certified by the department pursuant to subsection (3) of this section to determine the jurisdictions to which tax is owed.

(2) Any vendor that uses the data contained in an electronic database certified by the department of revenue pursuant to subsection (3) of this section to determine the jurisdictions to which tax is owed shall be held harmless for any tax, charge, or fee liability to any taxing jurisdiction that otherwise would be due solely as a result of an error or omission in the database.

(3) Any electronic database provider may apply to the department of revenue to be certified for use by Colorado vendors pursuant to this section. Such certification shall be

valid for three years. In order to be certified, an electronic database provider shall have a database that satisfies the following criteria:

(a) The database shall designate each address in the state, including, to the extent practicable, any multiple postal address applicable to one location and the taxing jurisdictions that have the authority to impose a tax on purchases made by purchasers at each address in the state.

(b) The information contained in the electronic database shall be updated as necessary and maintained in an accurate condition. In order to keep the database accurate, the database provider shall provide a convenient method for taxing jurisdictions that may be affected by the use of the database to inform the provider of apparent errors in the database. The provider shall have a process in place to promptly correct any errors brought to the provider's attention.

(c) The database shall be at least ninety-five percent accurate based on a statistically valid sample of addresses from the database tested for accuracy by the department of revenue.

(d) The database shall satisfy any additional criteria that the executive director of the department of revenue establishes pursuant to subsection (7) of this section.

(4) The department of revenue shall have the authority to designate an entity to examine electronic databases and report to the department as to the accuracy and suitability of the databases for use by vendors. The entity may impose a fee on each electronic database provider applying for certification in an amount necessary to cover the reasonable and documented costs of examining the database.

(5) The department of revenue shall have the authority to waive the certification process specified in subsection (4) of this section and certify an electronic database as suitable for use by vendors if the database has been previously certified by a public or private entity and the certification criteria of the certifying entity are the same or more stringent than the criteria specified in subsection (3) of this section. The department shall have the discretion to accept or reject a previously certified database, and under no circumstance shall the department be required to waive the certification process pursuant to this subsection (5).

(6) The department of revenue shall have the right to deny or revoke the certification of any electronic database for just cause.

(7) The executive director of the department of revenue shall promulgate rules for the administration of this section. Such rules shall be promulgated in accordance with article 4 of title 24, C.R.S.

Source: L. 2004: Entire section added, p. 767, § 2, effective May 17.

Cross references: For the legislative declaration contained in the 2004 act enacting this section, see section 1 of chapter 231, Session Laws of Colorado 2004.

39-26-105.4. Remittance of tax - determination of address - dealer held harmless.

(1) Any licensed motor vehicle dealer that collects and remits tax to the department of revenue as specified in this part 1 for any sale of a motor vehicle shall be held harmless for any tax, charge, or fee liability to any taxing jurisdiction that the dealer proves was not collected solely because an address that does not meet the requirements of section 42-6-139, C.R.S., was provided by the purchaser for purposes of calculating the amounts of tax either due on the sale and purchase of such vehicle pursuant to this part 1 or section 29-2-106, C.R.S., if the dealer:

(a) Informs the purchaser of a motor vehicle of the key requirements of motor vehicle titling and registration as specified in sections 42-3-103 (4) (a), 42-6-134, 42-6-139, and 42-6-140, C.R.S.; and

(b) Obtains an affidavit signed by the purchaser stating that the purchaser's address is true and correct.

Source: L. 2009: Entire section added, (HB 09-1230), ch. 232, p. 1066, § 1, effective August 5.

39-26-105.5. Remittance of sales taxes - mandatory electronic funds transfers. For any calendar year commencing on or after January 1, 2002, any vendor whose liability for state sales tax only for the previous calendar year was more than seventy-five thousand dollars shall use electronic funds transfers to remit all state and local sales taxes required to be remitted to the executive director of the department of revenue. The executive director may promulgate rules to effectively implement this section, but shall first consult with the state treasurer to ensure that any rules promulgated do not adversely affect the ability of the state treasurer to optimize sales tax investment earnings. Such rules shall be promulgated in accordance with article 4 of title 24, C.R.S. The executive director shall not require any taxpayer required to remit sales taxes by electronic funds transfers to remit sales tax prior to the deadline specified in section 39-26-105 for taxpayers who remit sales taxes by other means.

Source: L. 2001: Entire section added, p. 510, § 1, effective August 8.

39-26-106. Schedule of sales tax. (1) (a) (I) Except as otherwise provided in subparagraph (II) of this paragraph (a), there is imposed upon all sales of commodities and services specified in section 39-26-104 a tax at the rate of three percent of the amount of the sale, to be computed in accordance with schedules or systems approved by the executive director of the department of revenue. Said schedules or systems shall be designed so that no such tax is charged on any sale of seventeen cents or less.

(II) On and after January 1, 2001, there is imposed upon all sales of commodities and services specified in section 39-26-104 a tax at the rate of two and ninety one-hundredths percent of the amount of the sale to be computed in accordance with schedules or systems approved by the executive director of the department of revenue. Said schedules or systems shall be designed so that no such tax is charged on any sale of seventeen cents or less.

(b) Notwithstanding the three percent rate provisions of paragraph (a) of this subsection (1), for the period May 1, 1983, through July 31, 1984, the rate of the tax imposed pursuant to this subsection (1) shall be three and one-half percent.

(2) (a) Except as provided in paragraph (b) of this subsection (2), retailers shall add the tax imposed, or the average equivalent thereof, to the sale price or charge, showing such tax as a separate and distinct item, and when added such tax shall constitute a part of such price or charge and shall be a debt from the consumer or user to the retailer until paid and shall be recoverable at law in the same manner as other debts. The retailer shall be entitled, as collecting agent of the state, to apply and credit the amount of the retailer's collections against the rate to be paid by the retailer under the provisions of section 39-26-105, remitting any excess of collections over said rate, less the fee retained by the retailer for the collection and remittance of the tax pursuant to said section, to the executive director of the department of revenue in the retailer's next monthly sales tax return.

(b) Any retailer selling malt, vinous, or spirituous liquors by the drink or any vendor selling individual items of personal property through coin-operated vending machines may include in his sales price the tax levied under this part 1; except that no such retailer shall advertise or hold out to the public in any manner, directly or indirectly, that such tax is not included as a part of the sales price to the consumer. The schedule set forth in subsection (1) of this section shall be used by such retailer in determining amounts to be included in such sales price. No such retailer shall gain any benefit from the collection or payment of such tax, except as permitted in section 39-26-105 (1), nor shall the use of the schedule set forth in subsection (1) of this section relieve such retailer from liability for payment of the full amount of the tax levied by this part 1.

(3) Repealed.

Source: L. 35: p. 1007, § 5. **CSA:** C. 144, § 6. **L. 37:** p. 1083, § 1. **L. 45:** p. 579, § 3. **CRS 53:** § 138-6-6. **C.R.S. 1963:** § 138-5-6. **L. 65:** p. 1123, § 2. **L. 65, 1st Ex. Sess.:** p. 16, § 1. **L. 77:** (1) R&RE, p. 1825, § 1, effective July 1. **L. 83:** (1) amended, p. 1518, § 3, effective March 22; (1)(b) amended, p. 2097, § 6, effective October 13. **L. 84:** (1)(b) amended, p. 1142, § 3, effective June 7. **L. 88:** (2)(b) amended, p. 1328, § 2, effective

April 4. **L. 2000:** (1)(a) amended and (3) added, p. 1431, § 3, effective May 31. **L. 2001:** (2)(a) amended, p. 1280, § 57, effective June 5. **L. 2002:** (3)(a) and (3)(b)(V) amended, p. 328, § 1, effective April 19. **L. 2003:** (2)(a) amended, p. 2636, § 2, effective June 5. **L. 2009:** (2)(a) amended, (SB 09-212), ch. 3, p. 6, § 2, effective February 26. **L. 2010:** (1)(a)(I) amended and (3) repealed, (SB 10-212), ch. 412, pp. 2036, 2032, §§ 11, 1, effective July 1.

ANNOTATION

Statute of limitations for reimbursement pursuant to long-term lease. Where a long-term lease agreement is executed, and where the lessor subsequently pays the applicable sales taxes and invoices the amount paid to the lessee, but the lessee refuses to make reimbursement, former § 13-80-110, which provided for a six-

year statute of limitations, was the applicable statutory section. *Columbine Beverage Co. v. Continental Can Co.*, 662 P.2d 1094 (Colo. App. 1982).

Applied in *City of Montrose v. Pub. Utils. Comm'n*, 629 P.2d 619 (Colo. 1981).

39-26-107. Rules and regulations. To provide uniform methods of adding the tax, or the average equivalent thereof, to the selling price, it is the duty of the executive director of the department of revenue to formulate and promulgate after hearing appropriate rules and regulations to effectuate the purpose of sections 39-26-105 to 39-26-113.

Source: **L. 35:** p. 1007, § 5. **CSA:** C. 144, § 7. **L. 37:** p. 1083, § 1. **CRS 53:** § 138-6-7. **C.R.S. 1963:** § 138-5-7.

ANNOTATION

Director of revenue is vested with full authority to change a tax regulation designating the status of painting and electrical contractors so as to meet the requirements of this article

wherein so doing he not violate any plain provision of this article. *Craftsman Painters & Decorators, Inc. v. Carpenter*, 111 Colo. 1, 137 P.2d 414 (1942).

39-26-108. Tax cannot be absorbed. It is unlawful for any retailer to advertise or hold out or state to the public or to any customer, directly or indirectly, that the tax or any part thereof imposed by this part 1 will be assumed or absorbed by the retailer or that it will not be added to the selling price of the property sold or if added that it or any part thereof will be refunded. Any person violating any of the provisions of sections 39-26-105 to 39-26-113 is guilty of a misdemeanor.

Source: **L. 35:** p. 1007, § 5. **CSA:** C. 144, § 8. **L. 37:** p. 1083, § 1. **CRS 53:** § 138-6-8. **C.R.S. 1963:** § 138-5-8.

ANNOTATION

Law reviews. For article, "Colorado Sales and Use Tax Consequences in Sales of Businesses", see 11 Colo. Law. 679 (1982).

Ultimate responsibility for payment of the sales tax is on the consumer. While the retailer has the duty to collect the tax, it only acts as an agent of the state in this capacity. *Columbine Beverage Co. v. Continental Can Co.*, 662 P.2d 1094 (Colo. App. 1982).

Liability does not rest on contractual arrangement with vendor. The liability of the

consumer to pay the sales tax does not rest on any contractual arrangement with the vendor regarding the collection or payment of these taxes. Therefore, it is not necessary for a lessor specifically to include provisions for payment of the tax in its written lease agreement with the lessee. *Columbine Beverage Co. v. Continental Can Co.*, 662 P.2d 1094 (Colo. App. 1982).

39-26-109. Reports of vendor. If the accounting methods regularly employed by the vendor in the transaction of his business, or other conditions, are such that reports of sales made on a calendar-month basis will impose unnecessary hardship, the executive director of the department of revenue, upon written request of the vendor, may accept reports at such intervals as will in his opinion better suit the convenience of the taxpayer and will not jeopardize the collection of the tax. The executive director may by rule permit taxpayers whose monthly tax collected is less than three hundred dollars to make returns and pay taxes at intervals not greater than every three months.

Source: L. 35: p. 1008, § 5. CSA: C. 144, § 9. L. 37: p. 1084, § 1. CRS 53: § 138-6-9. C.R.S. 1963: § 138-5-9. L. 64: p. 818, § 4. L. 65: p. 1124, § 3. L. 80: Entire section amended, p. 732, § 1, effective July 1.

Cross references: For rule-making procedures, see article 4 of title 24.

39-26-110. Retailer - multiple locations. A retailer doing business in two or more places or locations, taxable under this part 1, may file each return covering all such business activities engaged within this state.

Source: L. 35: p. 1008, § 5. CSA: C. 144, § 11. L. 37: p. 1084, § 1. CRS 53: § 138-6-10. C.R.S. 1963: § 138-5-10.

39-26-111. Credit sales. (1) In case of a sale upon credit, or a contract for sale wherein it is provided that the price shall be paid in installments and title does not pass until a future date, or a chattel mortgage or a conditional sale, there shall be paid upon each payment, upon the account of purchase price, that portion of the total tax which the amount paid bears in the total purchase price. Notwithstanding any other provision of this subsection (1), a retailer doing business wholly or partly on a credit basis may, at his election, make a return, and remit sales tax on credit sales, on the basis of the aggregate amount of cash received during the month from taxable credit sales. The retailer may determine the tax to be remitted on the basis of his reasonable estimate of the aggregate amount of tax which he has collected from his credit customers during the month. A retailer's estimate of the taxes collected on credit sales made in any month (referred to in this section as "base month") shall be deemed reasonable if the cumulative sum of the monthly amounts of taxes on such credit sales remitted by the retailer on or before the close of the third, sixth, ninth, twelfth, and fifteenth calendar months following the base month is not less than twenty-five percent, forty-three and seventy-five one-hundredths percent, sixty-two and five-tenths percent, eighty-one and twenty-five one-hundredths percent, and one hundred percent, respectively, of the total taxes due on the aggregate credit sales made by the retailer in the base month. In no event, however, shall the amount of taxes remitted by the retailer in any month be less than the amount which the retailer actually estimates to have been collected in that month.

(2) If a retailer transfers, sells, assigns, or otherwise disposes of an account receivable, he shall be deemed to have received the full balance of the consideration for the original sale and shall be liable for the remittance of the sales tax on the balance of the total sale price not previously reported; except that such transfer, sale, assignment, or other disposition of an account receivable by a retailer to a closely held subsidiary, as defined in section 39-26-102 (10) (k), shall not be deemed to require the retailer to pay the sales tax on the credit sale represented by the account transferred prior to the time the customer makes payment on said account.

Source: L. 35: p. 1008, § 5. CSA: C. 144, § 12. L. 37: p. 1084, § 1. CRS 53: § 138-6-11. C.R.S. 1963: § 138-5-11. L. 79: Entire section amended, p. 1446, § 37, effective July 3.

ANNOTATION

Director has authority to order payment of taxes on basis other than cash. *Montgomery Ward & Co. v. State Dept. of Rev.*, 628 P.2d 85 (Colo. 1981).

Treatment of sales of accounts receivable by retailer to subsidiary. *Montgomery Ward &*

Co. v. State Dept. of Rev., 628 P.2d 85 (Colo. 1981).

Applied in *Montgomery Ward & Co. v. State Dept. of Rev.*, 675 P.2d 318 (Colo. App. 1983).

39-26-112. Excess tax - remittance. If any vendor, during any reporting period, collects as a tax an amount in excess of three percent of all taxable sales made prior to January 1, 2001, and two and ninety one-hundredths percent of all taxable sales made on or after January 1, 2001, such vendor shall remit to the executive director of the department of revenue the full net amount of the tax imposed in this part 1 and also such excess. The retention by the retailer or vendor of any excess of tax collections over the said percentage of the total taxable sales of such retailer or vendor or the intentional failure to remit punctually to the executive director the full amount required to be remitted by the provisions of this part 1 is declared to be unlawful and constitutes a misdemeanor.

Source: L. 35: p. 1009, § 5. **CSA:** C. 144, § 13. **L. 37:** p. 1085, § 1. **L. 45:** p. 580, § 4. **CRS 53:** § 138-6-12. **C.R.S. 1963:** § 138-5-12. **L. 65:** p. 1124, § 4. **L. 2001:** Entire section amended, p. 1281, § 58, effective June 5.

39-26-113. Collection of sales tax - motor vehicles - exemption. (1) No registration shall be made of a motor or other vehicle for which registration is required and no certificate of title shall be issued for such vehicle or for a mobile home by the department of revenue or its authorized agent until any tax due on the sale and purchase of such vehicle pursuant to section 29-2-106, C.R.S., or section 39-26-106 or imposed by ordinance of any home rule city has been paid.

(2) If an applicant for registration and certificate of title for any motor or other vehicle or for a certificate of title for a mobile home fails to show payment of the sales taxes applicable to the sale and purchase thereof by means of proper receipts therefor, the department of revenue or its authorized agent shall collect all such applicable taxes at the time such application is made.

(3) Revenues due the state and collected pursuant to this section shall be distributed as are other revenues under this part 1, and revenues due any county, city, or town so collected shall be distributed in accordance with the provisions of section 29-2-106, C.R.S., or as specified by contract entered into with the department of revenue pursuant to section 24-35-110, C.R.S.

(4) To facilitate collection of sales taxes as provided in this section, the governing body of each city or town which has imposed a sales tax shall certify to the department of revenue and to the county clerk of the county in which such city or town is located a true copy of its current sales tax ordinances, and shall likewise certify any subsequent changes therein.

(5) (a) The sale of a new or used automobile to a purchaser who is a nonresident of Colorado and who purchases such automobile for use outside this state is exempt from all sales taxes, the collection of which is provided for by this section.

(b) The executive director of the department of revenue shall attempt to negotiate agreements of reciprocity concerning the collection of sales taxes on motor vehicles with adjacent states.

(c) Repealed.

(6) (a) In the case of a seller-financed sale in which the seller has added the sales tax due on the sale to the financed sales price of the motor vehicle and the purchaser has defaulted or otherwise failed to make payments due to the seller, the seller shall be entitled to deduct all portions of the unreceived payments that are attributable to the sales tax due on the sale from the next sales tax return made by the seller pursuant to this article. If the amount to be deducted pursuant to this subsection (6) exceeds the amount of sales tax to be remitted by the seller for the next reporting period, the seller may carry forward the

remaining amount of the deduction to future sales tax returns. In no event shall this subsection (6) be construed to create a right to a refund or any other payment by the department of revenue to the seller.

(b) For purposes of this subsection (6), “seller-financed sale” means a retail sale of a motor vehicle by a seller licensed pursuant to part 1 of article 6 of title 12, C.R.S., in which the seller, or a wholly-owned affiliate or subsidiary of the seller, collects all or part of the total consideration paid for the motor vehicle in periodic payments and retains a lien on the motor vehicle until all payments have been received. Except as otherwise provided in this paragraph (b), the term does not include a retail sale of a motor vehicle in which a person other than the seller provides the consideration for the sale and retains a lien on the motor vehicle until all payments have been made.

(c) The department of revenue may promulgate rules and regulations for the implementation of this subsection (6).

Source: L. 35: p. 1009, § 5. CSA: C. 144, § 14. L. 37: p. 1085, § 1. L. 41: p. 661, § 5. CRS 53: § 138-6-13. C.R.S. 1963: § 138-5-13. L. 71: p. 1263, § 1. L. 77: (5) added, p. 1827, § 1, effective July 23; (1) and (2) amended, p. 1743, § 6, effective January 1, 1978. L. 79: (5)(c) repealed, p. 1463, § 1, effective June 29. L. 84: (5)(b) amended, p. 1123, § 37, effective June 7. L. 95: (6) added, p. 889, § 1, effective May 25.

Cross references: For vehicles required to be registered, see § 42-3-102.

ANNOTATION

Section’s provisions are more than merely administrative; they are mandatory. Codding v. Jackson, 132 Colo. 320, 287 P.2d 976 (1955).

Unless strict compliance is made, no interest or right can be transferred. Codding v. Jackson, 132 Colo. 320, 287 P.2d 976 (1955).

Mobile homes are meant to be included as “motor vehicles” under sales tax provisions. State ex rel. Dept. of Rev. v. Modern Trailer Sales, Inc., 175 Colo. 296, 486 P.2d 1064 (1971).

Sales tax is levied upon sales transaction and not upon property transferred. State ex rel. Dept. of Rev. v. Modern Trailer Sales, Inc., 175 Colo. 296, 486 P.2d 1064 (1971).

Entire sales tax collectible at time of sale. In the case of motor vehicles, the entire sales tax must be collected and remitted at the time of the sale, regardless of whether the taxpayer reports on a cash or accrual basis, and if the sales tax is not paid, title cannot transfer and the vehicle

may not be registered as provided for by law. State ex rel. Dept. of Rev. v. Modern Trailer Sales, Inc., 175 Colo. 296, 486 P.2d 1064 (1971).

Purchaser must pay sales tax before applying for certificate of title. Where a party fails to make an application for a new certificate of title within ten days as required by law and fails to pay the sales tax and the fees due within that time, he is prevented from acquiring any right, title, or interest in the motor vehicle involved. Codding v. Jackson, 132 Colo. 320, 287 P.2d 976 (1955).

Municipal tax imposed upon transfer of ownership of a motor vehicle at auction without regard to the value of the vehicle sold was not a sales tax in violation of subsection (5)(a), but rather was an excise tax imposed on privilege of conducting a motor vehicle auction within the city. Colo. Auto Auction Servs. Corp. v. Commerce City, 800 P.2d 998 (Colo. 1990).

39-26-113.5. Refund of state sales taxes for vehicles used in interstate commerce - fund. (1) (a) Except as provided in subsection (3) of this section, for the calendar year commencing on January 1, 2011, and for each calendar year thereafter, a taxpayer may claim a refund of a percentage of all state sales and use taxes paid by the taxpayer pursuant to this part 1 and part 2 of this article on the sale, storage, or use of a model year 2010 or newer truck tractor or semitrailer with a gross vehicle weight rating of fifty-four thousand pounds or greater that is purchased on or after July 1, 2011.

(b) The total refund shall be calculated by the division of motor vehicles in the department of revenue in the same manner as the division calculates the proration of the annual specific ownership tax payable on Class A personal property as specified in section 42-3-107 (4), C.R.S.

(c) The total refund shall be claimed as follows:

(I) For the calendar year in which the truck tractor or semitrailer was purchased, stored,

or used, thirty-three percent of the total amount of the refund if the model year of the truck tractor or semitrailer was sold as new during such calendar year;

(II) For the first calendar year after the calendar year in which the truck tractor or semitrailer was purchased, stored, or used, thirty-three percent of the total amount of the refund if the model year of the truck tractor or semitrailer was sold as new during such calendar year; and

(III) For the second calendar year after the calendar year in which the truck tractor or semitrailer was purchased, stored, or used, thirty-three percent of the total amount of the refund if the model year of the truck tractor or semitrailer was sold as new during such calendar year.

(IV) and (V) (Deleted by amendment, L. 2010, (HB 10-1285), ch. 423, p. 2190, § 4, effective July 1, 2010.)

(2) To claim a refund allowed by subsection (1) of this section, a taxpayer shall submit a refund application to the department of revenue on a form provided by the department. The application shall be accompanied by proof of payment of state sales and use taxes paid by the taxpayer. The application shall also include any additional information that the department of revenue may require by rule.

(3) (a) The department of revenue shall deny a claimant the sales tax refund or a portion of such refund granted in this section if the claim results in more than the amount allocated for the credit pursuant to section 42-1-225, C.R.S.

(b) To implement this section, the department of revenue shall track the amount of the refunds granted under this section.

Source: L. 2009: Entire section added, (HB 09-1298), ch. 417, p. 2312, § 1, effective July 1, 2010. L. 2010: (1)(a) and (1)(c) amended and (3) added, (HB 10-1285), ch. 423, p. 2190, § 4, effective July 1.

Editor's note: Section 7 of chapter 417, Session Laws of Colorado 2009, provides that this section shall not take effect unless the revisor of statutes receives written notice from the executive director of the department of revenue that a sustainable source of revenue has been identified to implement this section; however, section 8 of chapter 423, Session Laws of Colorado 2010, amended section 7 of chapter 417, Session Laws of Colorado 2009, by eliminating the notification requirement. Chapter 417, Session Laws of Colorado 2009, became effective July 1, 2010.

39-26-114. Exemptions - disputes - credits or refunds - definitions - creation of fund. (Repealed)

Source: L. 35: p. 1009, § 6. CSA: C. 144, § 15. L. 37: p. 1086, § 15. L. 43: p. 540, § 1. L. 45: p. 576, §§ 3, 4. CRS 53: § 138-6-14. L. 57: p. 823, § 1. L. 59: pp. 801, 803, 804, §§ 1, 2, 3. L. 61: p. 823, § 1. L. 63: p. 952, § 1. C.R.S. 1963: § 138-5-14. L. 64: p. 818, § 5. L. 65: pp. 1124, 1126, 1148, §§ 5, 7, 3. L. 67: pp. 512, 532, §§ 2, 1. L. 69: p. 221, § 3. L. 70: pp. 396, 397, §§ 1, 1. L. 73: p. 241, § 24. L. 75: (1)(f) and (10) amended, p. 1468, § 15, effective July 18. L. 76: (1) R&RE, p. 318, § 76, effective May 20; (1)(a)(IX) and (1)(a)(X) added, p. 787, § 1, effective July 1. L. 77: (2)(d) amended, p. 1836, § 1, effective May 26; (1)(a)(VII) (1)(a)(IX), and (1)(a)(X) amended and (1)(a)(XI) added, pp. 1829, 1831, 1833, § 1, effective July 1; (1)(a)(XII) added, p. 1823, § 2, effective July 15; (1)(a)(XIII), (1)(a)(XIV), and (1)(a)(XV) added, p. 1834, § 1, effective July 20; (1)(a)(V) amended, p. 1828, § 1, effective January 1, 1978. L. 78: (1)(a)(II) amended, p. 506, § 2, effective March 8; (1)(a)(XVI) and (1)(a)(XVII) added, p. 514, § 1, effective April 4; (1)(a)(XVIII) added, § 3, effective July 1. L. 79: (1)(a)(XIX) and (1)(d) added and (2)(c) and (10) amended, pp. 1465, 1466, §§ 1, 2, 3, 4, effective June 7; (7)(a) and (8) amended, pp. 1428, 1468, §§ 9, 1, effective July 1; (1)(a)(XX) and (11) added, pp. 1428, 1447, §§ 8, 39, effective July 3; (1)(a)(VII) amended, p. 1641, § 55, effective July 19; (1)(a)(V) and (1)(a)(XV) amended, (1)(a)(XXI) added and (9) repealed, pp. 1431, 1440, 1464, 1501, §§ 15, 26, 27, 1, effective January 1, 1980. L. 80: (12) added, p. 752, § 5, effective April 10; (1)(a)(XXI) and (6) amended pp. 733, 736, §§ 1, 1, effective July 1; (1)(a)(V) amended, p. 727, § 24, effective January 1, 1981; (12) repealed, p. 752, § 5,

effective July 1, 1987. **L. 81:** (13) added, p. 1889, § 1, effective May 18; (5) amended, p. 1888, § 1, effective May 26. **L. 82:** (1)(a)(XXI) amended, p. 571, § 2, effective April 27; (14) added, p. 569, § 2, effective July 1. **L. 84:** (1)(a)(XXII) added, p. 1021, § 1, effective March 5. **L. 85:** (2)(b) and (7)(b)(I) amended, pp. 1257, 1284, §§ 9, 3, effective January 1, 1986. **L. 86:** (7)(a) and (11)(a) amended, pp. 1118, 1142, §§ 16, 4, effective July 1. **L. 87:** (11)(a) amended, p. 1451, § 25, effective June 22; (15) and (16) added, p. 1463, § 3, effective October 1. **L. 88:** (7)(a) R&RE, p. 1329, § 3, effective April 4; (11)(d) and (13) amended, p. 1326, § 4, effective April 6; (11)(a)(II) amended, p. 1317, § 14, effective May 29; (1)(a)(VII) amended, p. 1090, § 4, effective January 1, 1989. **L. 89:** (1)(c) amended, p. 1502, § 9, effective July 1, 1990. **L. 90:** (17) added, p. 1740, § 2, effective April 17. **L. 91:** (1)(a)(VII) amended, p. 2397, § 20, effective July 1; (1)(a)(XXIII) added, p. 1968, § 1, effective July 1, 1992. **L. 91, 1st Ex. Sess.:** (1)(a)(VII) amended, p. 6, § 9, effective July 1. **L. 92:** (1)(a)(XXIV) and (1)(a)(XXV) added, p. 2258, § 1, effective July 1. **L. 94:** (10) amended, p. 2568, § 88, effective January 1, 1995. **L. 95:** (11)(a)(II) amended, p. 137, § 1, effective April 7; (18) added, p. 329, § 1, effective April 27. **L. 96:** (11)(a)(II) and (11)(c) amended and (11)(c.5) added, p. 1857, § 1, effective June 5; (7)(c) and (7)(e) amended, p. 166, § 8, effective July 1; (1)(a)(XXIV) and (1)(a)(XXV) amended, p. 1241, § 100, effective August 7. **L. 97:** (5) and (6) amended, p. 370, § 2, effective July 1. **L. 98:** (19) added, p. 494, § 2, effective April 22; (1)(a)(XXVI) added, p. 736, § 3, effective May 18; (7)(b)(V) amended, p. 1348, § 84, effective June 1. **L. 99:** (22) added, p. 979, § 1, effective May 28; (1)(a)(II) amended, p. 1272, § 2, effective June 2; (17) RC&RE, p. 1297, § 2, effective June 3; (20) added, p. 1273, § 1, effective July 1; (21) added, p. 1303, § 1, effective July 1; (23) added, p. 1324, § 2, effective July 1; (7.5) added, p. 1355, § 1, effective January 1, 2000. **L. 2000:** (20)(a)(II)(B) and (20)(b)(II) amended, p. 549, § 3, effective July 1; (1)(a)(XXVI) amended, p. 736, § 3, effective August 2; (1)(a)(XV) amended, p. 1937, § 18, effective October 1. **L. 2001:** IP(20)(b)(II) amended, p. 162, § 1, effective July 1; IP(20)(b)(II) amended, p. 381, § 1, effective July 1; (24) added, p. 1545, § 1, effective July 1. **L. 2003:** (10) amended, p. 551, § 7, effective March 5; (1)(a)(XV) amended, p. 1818, § 6, effective August 6. **L. 2004:** Entire section repealed, p. 1016, § 1, effective July 1.

Editor's note: The provisions of this section were relocated to part 7 of this article. For the location of specific provisions, see the editor's note following each section in said part 7 and the comparative tables located in the back of the index.

39-26-115. Deficiency due to negligence. If any part of the deficiency is due to negligence or intentional disregard of authorized rules and regulations with knowledge thereof, but without intent to defraud, there shall be added ten percent of the total amount of the deficiency, and interest in such case shall be collected at the rate imposed under section 39-21-110.5, in addition to the interest provided by section 39-21-109, on the amount of such deficiency from the time the return was due, from the person required to file the return, which interest and addition shall become due and payable ten days after written notice and demand to him by the executive director of the department of revenue. If any part of the deficiency is due to fraud with the intent to evade the tax, then there shall be added one hundred percent of the total amount of the deficiency, and, in such case, the whole amount of the tax unpaid, including the additions, shall become due and payable ten days after written notice and demand by the executive director, and an additional three percent per month on said amount shall be added from the date the return was due until paid.

Source: **L. 35:** p. 1012, § 8. **CSA:** C. 144, § 18. **L. 37:** p. 1090, § 1. **CRS 53:** § 138-6-17. **C.R.S. 1963:** § 138-5-17. **L. 65:** p. 1149, § 3. **L. 81:** Entire section amended, p. 1866, § 11, effective June 8. **L. 85:** Entire section amended, p. 1257, § 10, effective January 1, 1986.

ANNOTATION

Law reviews. For article, "Collecting Pre- and Post-Judgment Interest in Colorado: A Primer", see 15 Colo. Law. 753 (1986). For article, "An Update of Appendices from Collecting Pre- and Post-Judgment Interest in Colorado", see 15 Colo. Law. 990 (1986).

Penalty provisions applicable to sales and use taxes. The penalty provisions of this section apply to sales taxes under part 1 of article 26, and also to use taxes under part 2. *Rose v. Executive Dir. of Dept. of Rev.*, 42 Colo. App. 319, 593 P.2d 982 (1979).

Section imposes a penalty upon an intentional but nonfraudulent avoidance of the sales tax. *Western Elec. Co. v. Weed*, 185 Colo. 340, 524 P.2d 1369 (1974).

To avoid penalty imposed by section, taxpayer should pay tax under protest and then seek judicial review. *Western Elec. Co. v. Weed*, 185 Colo. 340, 524 P.2d 1369 (1974).

Applied in *Montgomery Ward & Co. v. State Dept. of Rev.*, 675 P.2d 318 (Colo. App. 1983).

39-26-116. Record of sales. It is the duty of every person engaging or continuing in business in this state, for the transaction of which a license is required under this part 1 to keep and preserve suitable records of all sales made by him and such other books or accounts as may be necessary to determine the amount of tax for the collection of which he is liable under this part 1. It is the duty of every such person to keep and preserve for a period of three years all invoices of goods and merchandise purchased for resale and all such books, invoices, and other records shall be open for examination at any time by the executive director of the department of revenue or his duly authorized agent.

Source: L. 35: p. 1014, § 9. CSA: C. 144, § 23. L. 37: p. 1092, § 1. L. 39: p. 503, § 1. CRS 53: § 138-6-22. C.R.S. 1963: § 138-5-22.

ANNOTATION

Applied in *Montgomery Ward & Co. v. State Dept. of Rev.*, 628 P.2d 85 (Colo. 1981).

39-26-117. Tax lien - exemption from lien. (1) (a) Except as provided in paragraphs (b) and (f) of this subsection (1), the tax imposed by this part 1 shall be a first and prior lien upon the goods and business fixtures of or used by any retailer or qualified purchaser under lease, title retaining contract, or other contract arrangement, excepting stock of goods sold or for sale in the ordinary course of business, and shall take precedence on all such property over other liens or claims of whatsoever kind or nature.

(b) Any retailer or person in possession shall provide a copy of any lease pertaining to the assets and property described in paragraph (a) of this subsection (1) to the department of revenue within ten days after seizure by the department of such assets and property. The department shall verify that such lease is bona fide and notify the owner that such lease has been received by the department. The department shall use its best efforts to notify the owner of the real or personal property which might be subject to the lien created in paragraph (a) of this subsection (1). The real or personal property of an owner who has made a bona fide lease to a retailer shall be exempt from the lien created in paragraph (a) of this subsection (1) if such property can reasonably be identified from the lease description or if the lessee is given an option to purchase in such lease and has not exercised such option to become the owner of the property leased. This exemption shall be effective from the date of the execution of the lease. Such exemption shall also apply if the lease is recorded with the county clerk and recorder of the county where the property is located or based or a memorandum of the lease is filed with the department of revenue on such forms as may be prescribed by said department after the execution of the lease at a cost for such filing of two dollars and fifty cents per document. Motor vehicles which are properly registered in this state, showing the lessor as owner thereof, shall be exempt from the lien created in paragraph (a) of this subsection (1); except that said lien shall apply to the extent that the lessee has an earned reserve, allowance for depreciation not to exceed fair market value, or similar interest which is or may be credited to the lessee. Where the lessor and

lessee are blood relatives or relatives by law or have twenty-five percent or more common ownership, a lease between such lessee and such lessor shall not be considered as bona fide for purposes of this section.

(b.5) Any coin-operated vending machine or video or other game machine shall be exempt from the lien created in paragraph (a) of this subsection (1) if:

(I) The machine is placed on the retailer's premises under the terms of a lease or other agreement under which the retailer is given no right to become the owner of the machine;

(II) The machine is plainly marked in a location accessible to agents of the department of revenue with information sufficient to permit identification of the owner of said property; and

(III) The owner of the machine has filed with the department of revenue a schedule listing the machine by serial number and including thereon the owner's full name and the address of his business and such other information as the executive director of the department of revenue may require. To protect the anonymity of owners of property, the executive director of the department of revenue may permit property covered by this paragraph (b.5) to be marked using numbers or other coded identification.

(c) Any retailer who is in possession of property under the terms of a lease, which property is exempt from lien as provided in this section, may be required by the executive director of the department of revenue to remit taxes collected at more frequent intervals than monthly, but no more frequently than semimonthly, or may be required to furnish security for the proper payment of taxes whenever the collection of taxes appears to be in jeopardy.

(d) Any retailer who sells out his business or stock of goods, or quits business, shall be required to make out the return as provided in this part 1, within ten days after the date he sold his business or stock of goods or quit business, and his successor in business shall be required to withhold sufficient purchase money to cover the amount of said taxes due and unpaid until such time as the former owner produces a receipt from the executive director of the department of revenue showing that the taxes have been paid or a certificate that no taxes are due.

(e) If the purchaser of a business or stock of goods fails to withhold the purchase money as provided in paragraph (d) of this subsection (1), and the taxes are due and unpaid after the ten-day period allowed, he, as well as the vendor, shall be personally liable for the payment of the taxes unpaid by the former owner. Likewise, anyone who takes any stock of goods or business fixtures of or used by any retailer under lease, title retaining contract, or other contract arrangement, by purchase, foreclosure sale, or otherwise, takes same subject to the lien for any delinquent sales taxes owed by such retailer and shall be liable for the payment of all delinquent sales taxes of such prior owner, not, however, exceeding the value of property so taken or acquired.

(f) Any qualified purchaser that provides a direct payment permit number issued pursuant to section 39-26-103.5 to a vendor or retailer shall be subject to the lien created in paragraph (a) of this subsection (1) to the extent of any tax owed as a result of purchases made by the qualified purchaser plus any penalty and interest assessed pursuant to this article or article 21 of this title.

(2) Whenever the business or property of any taxpayer subject to this part 1 shall be placed in receivership, bankruptcy, or assignment for the benefit of creditors, or seized under distraint for property taxes, all taxes, penalties, and interest imposed by this part 1, and for which said retailer is in any way liable under the terms of this part 1, shall be a prior and preferred claim against all the property of said taxpayer, except as to preexisting claims or liens of a bona fide mortgagee, pledgee, judgment creditor, or purchaser whose rights shall have attached prior to the filing of the notice as provided in section 39-26-118 on the property of the taxpayer, other than the goods, stock in trade, and business fixtures of such taxpayer. No sheriff, receiver, assignee, or other officer shall sell the property of any person subject to this part 1 under process or order of any court without first ascertaining from the executive director the amount of any taxes due and payable under this part 1, and, if there are any such taxes due, owing, or unpaid, it is the duty of such officer to first pay the amount of said taxes out of the proceeds of said sale before making payment of any moneys to any judgment creditor or other claims of whatsoever kind or nature, except the costs of the proceedings and other preexisting claims or liens as provided in this section. For the purposes of this part 1, "taxpayer" includes "retailer".

Source: L. 35: p. 1014, § 10. CSA: C. 144, § 24. L. 37: p. 1093, § 1. L. 39: p. 503, § 2. CRS 53: § 138-6-23. C.R.S. 1963: § 138-5-23. L. 69: p. 1137, § 2. L. 77: (1)(b) amended, p. 1803, § 2, effective June 19. L. 89: (1)(b.5) added, p. 1509, § 2, effective April 6. L. 92: (1)(a) and (1)(b) amended, p. 2201, § 4, effective April 16. L. 99: (1)(a) amended and (1)(f) added, p. 13, § 4, effective January 1, 2000.

ANNOTATION

Law reviews. For article, "The Perennial Problem of Security Priority and Recordation", see 24 Rocky Mt. L. Rev. 180 (1952). For article, "Colorado Sales and Use Tax Consequences in Sales of Businesses", see 11 Colo. Law. 679 (1982). For article, "An Introduction to Tax Liens", see 13 Colo. Law. 399 (1984). For article, "A Practical Checklist for Buying or Selling a Small Business in Colorado", see 15 Colo. Law. 2171 (1986).

Constitutionality. This section does not create separate classes of persons in violation of the equal protection clause of the fourteenth amendment. *ITT Diversified Credit Corp. v. Couch*, 669 P.2d 1355 (Colo. 1983).

This section, as used to seize property of lessor due to lessee's violation, does not violate due process nor does it effect a taking. This section represents a valid exercise of the sovereign power to assess and collect taxes, which is distinguishable from the taking of private property for a public purpose. *Burkin Associates v. Tipton*, 845 P.2d 525 (Colo. 1993).

This section does not violate the equal protection and due process rights of a consignor when a rational basis exists for exempting leased property from the tax lien while enforcing the tax lien against consigned property. *Van Dorn Retail Mgt., Inc. v. City & County of Denver*, 902 P.2d 383 (Colo. App. 1994).

Lien imposed by section valid. In an action involving the priority of liens of a chattel mortgage and that of sales taxes under this section, the statutory lien cannot be considered "secret" and thus without validity. *Sweeney Elec. Co. v. Poston*, 110 Colo. 139, 132 P.2d 443 (1942).

Any lien for general taxes on personal property is inferior to the lien under this section. *City & County of Denver v. Armstrong*, 105 Colo. 290, 97 P.2d 448 (1939); *Sweeney Elec. Co. v. Poston*, 110 Colo. 139, 132 P.2d 443 (1942).

Lien takes priority over security interest. A lien for sales and service taxes takes priority over a security interest which has previously attached. *Young v. Golden State Bank*, 632 P.2d 1053 (Colo. App. 1981).

A lien for state sales taxes is a first and prior lien on goods and business fixtures and has priority over a prior perfected security interest. *ITT Diversified Credit Corp. v. Couch*, 669 P.2d 1355 (Colo. 1983); *Wimmer v. Jenkins*, 703 P.2d 1326 (Colo. App. 1985).

There is a statutory priority for tax liens over any interest a third party might have in the goods, stock in trade, and business fixtures of a delinquent taxpayer. *ITT Diversified Credit Corp. v. Couch*, 669 P.2d 1355 (Colo. 1983).

Statutory priority for tax liens over perfected security interests in goods and business fixtures is not limited to the period when the goods are in the control of the delinquent taxpayer and to permit such priority to be terminated upon repossession of the goods by a secured party would defeat the public policy and legislative intent of tax lien priority statutes. *ITT Diversified Credit Corp. v. Couch*, 669 P.2d 1355 (Colo. 1983).

Under this section, mere use of personal property subjects it to a lien, notwithstanding the lack of ownership in the using party. *Horacek v. Cherry Creek Corp.*, 28 Colo. App. 258, 472 P.2d 158 (1970).

Subsection (1)(a) exemption limited. The exemption created in subsection (1)(a) protects only the retail customers of the taxpayer who purchased goods from the retailer's inventory in the ordinary course of business. The exception does not apply to persons who obtain the retailer's goods and fixtures by foreclosure, bulk sale of inventory, or repossession. *ITT Diversified Credit Corp. v. Couch*, 669 P.2d 1355 (Colo. 1983).

Strict compliance with recording requirements in subsection (1)(b) is required in order to qualify for tax lien exemption. *Charnes v. Norwest Leasing, Inc.*, 787 P.2d 145 (Colo. 1990).

Under this section, liens for sales and use taxes are entitled to priority over all other liens, including liens of the FDIC. *Pima Financial Serv. v. Intermountain Home Sys.*, 786 F. Supp. 1551 (D. Colo. 1992).

39-26-118. Recovery of taxes, penalty, and interest. (1) All sums of money paid by the purchaser to the retailer as taxes imposed by this article shall be and remain public money, the property of the state of Colorado, in the hands of such retailer, and he shall hold the same in trust for the sole use and benefit of the state of Colorado until paid to the executive director of the department of revenue, and, for failure to so pay to the executive director, such retailer shall be punished as provided by law.

(2) (a) If a person neglects or refuses to make a timely return in payment of the tax or to pay or correctly account for any tax as required by this article, the executive director of the department of revenue shall make an estimate, based upon the information that may be available, of the amount of taxes due or not accounted for or incorrectly accounted for on a return for the period for which the taxpayer is delinquent and shall add thereto a penalty equal to the sum of fifteen dollars for the failure or ten percent of such unpaid, unaccounted, or incorrectly accounted amount plus one-half percent per month from the date when due, not exceeding eighteen percent in the aggregate, and interest if applicable on the delinquent taxes at the rate imposed under section 39-21-110.5. Promptly thereafter, the executive director shall give to the delinquent taxpayer written notice of the estimated taxes, penalty, and interest, which notice shall be sent by first-class mail as set forth in section 39-21-105.5.

(b) Such estimate shall thereupon become a notice of deficiency as provided in section 39-21-103. A hearing may be held and the executive director shall make a final determination pursuant to that section. The taxpayer may appeal the said final determination in the manner provided in section 39-21-105.

(3) (a) If any taxes, penalty, or interest imposed by this article and shown due by returns filed by the taxpayer or as shown by assessments duly made as provided in this section are not paid within five days after the same are due, the executive director shall issue a notice, setting forth the name of the taxpayer, the amount of the tax, penalties, and interest, the date of the accrual thereof, and that the state of Colorado claims a first and prior lien therefor on the real and tangible personal property of the taxpayer except as to preexisting claims or liens of a bona fide mortgagee, pledgee, judgment creditor, or purchaser whose rights have attached prior to the filing of the notice as provided in this section on property of the taxpayer, other than the goods, stock in trade, and business fixtures of such taxpayer.

(b) Said notice shall be on forms prepared by the executive director, and shall be verified by him or his duly qualified deputy, or any duly qualified agent of the executive director, whose duties are the collection of such tax, and may be filed in the office of the county clerk and recorder of any county in the state in which the taxpayer owns real or tangible personal property, and the filing of such notice shall create such lien on such property in that county and constitute notice thereof. After said notice has been filed, or concurrently therewith, or at any time when taxes due are unpaid, whether such notice is filed or not, the executive director may issue a warrant directed to any duly authorized revenue collector, or to the sheriff of any county of the state, commanding him to levy upon, seize, and sell sufficient of the real and personal property of the tax debtor found within his county for the payment of the amount due, together with interest, penalties, and costs, as may be provided by law, subject to valid preexisting claims or liens.

(4) Such revenue collector or the sheriff shall forthwith levy upon sufficient of the property of the taxpayer, or any property used by such taxpayer in conducting his retail business, except property made exempt from lien pursuant to the provisions of section 39-26-117 (1) (b), and said property so levied upon shall be sold in all respects with like effect and in the same manner as is prescribed by law in respect to executions against property upon judgment of a court of record, and the remedies of garnishments shall apply. The sheriff shall be entitled to such fees in executing such warrant as are allowed by law for similar services.

(5) Any lien for taxes as shown on the records of the county clerk and recorders as provided in this section, upon payment of all taxes, penalties, and interest covered thereby, shall be released by the executive director in the same manner as mortgages and judgments are released.

(6) It is the duty of any county clerk and recorder to whom such notices are sent to file and record the same without cost or charge.

(7) (a) The executive director may also treat any such taxes, penalties, or interest due and unpaid as a debt due the state from the vendor. In case of failure to pay the tax or any portion thereof, or any penalty or interest thereon when due, the executive director may receive at law the amount of such taxes, penalties, and interest in such county or district court of the county wherein the taxpayer resides or has his principal place of business having jurisdiction of the amounts sought to be collected. The return of the taxpayer or the

assessment made by the executive director, as provided in this article, shall be prima facie proof of the amount due.

(b) Such actions may be actions in attachment, and writs of attachment may be issued to the sheriff, and in any such proceeding no bond shall be required of the executive director, nor shall any sheriff require of the executive director an indemnifying bond for executing the writ of attachment or writ of execution upon any judgment entered in such proceedings; and the executive director may prosecute appeals in such cases without the necessity of providing bond therefor. It is the duty of the attorney general or any district attorney, when requested by the executive director, to commence action for the recovery of taxes due under this article, and this remedy shall be in addition to all other existing remedies or remedies provided in this article and article 21 of this title.

(8) In any action affecting the title to real estate or the ownership or rights to possession of personal property, the state of Colorado may be made a party defendant for the purpose of obtaining an adjudication or determination of its lien upon the property involved therein. In any such action, service of summons upon the executive director or any person in charge of the office of the executive director shall be sufficient service and binding upon the state of Colorado.

(9) The executive director is authorized to waive, for good cause shown, any penalty or interest assessed as provided in this article and article 21 of this title, and interest imposed in excess of the rate imposed under section 39-21-110.5 shall be deemed a penalty.

Source: L. 35: p. 1015, § 11. CSA: C. 144, § 25. L. 37: p. 1094, § 1. L. 39: p. 505, § 3. CRS 53: § 138-6-24. C.R.S. 1963: § 138-5-24. L. 64: pp. 184, 326, §§ 3, 314. L. 65: p. 1150, § 3. L. 69: p. 1138, § 3. L. 77: (2)(a) amended, p. 743, § 3, effective July 1. L. 81: (2)(a) and (9) amended, p. 1867, § 12, effective June 8. L. 85: (2)(a) amended, p. 1257, § 11, effective January 1, 1986. L. 86: (2)(a) amended, p. 1222, § 36, effective May 30. L. 89: (9) amended, p. 1497, § 2, effective June 7. L. 96: (2)(a) amended, p. 167, § 9, effective July 1. L. 2009: (2)(a) amended, (HB 09-1101), ch. 68, p. 236, § 1, effective March 25.

ANNOTATION

Law reviews. For article, "An Introduction to Tax Liens", see 13 Colo. Law. 399 (1984). For article, "Survey of Colorado Tax Liens", see 14 Colo. Law. 1765 (1985).

Section constitutional. The provisions of this section, giving to the director of revenue the power of distraint, levy, and sale, do not unconstitutionally confer judicial powers upon the executive branch of government. *Sweeney Elec. Co. v. Poston*, 110 Colo. 139, 132 P.2d 443 (1942).

Retailer collecting tax deemed trustee. A retailer who collects the tax by virtue of this section is a trustee and answerable to the state for such moneys until they are paid over to the state treasurer. *Sweeney Elec. Co. v. Poston*, 110 Colo. 139, 132 P.2d 443 (1942).

Revocation of authority to remit sales tax on cash receipt basis is not notice of deficiency. A determination that sales tax on credit sales should be remitted on a sales or accrual basis and the revocation of authority to remit on

cash receipt basis was not a notice of deficiency and assessment of tax under subsection (2). *Montgomery Ward & Co. v. State Dept. of Rev.*, 675 P.2d 318 (Colo. App. 1983).

Section 39-26-125 governs the department's attempt to collect sales tax in general, including those held in trust by virtue of this section, which merely describes the nature of the taxes held by the retailer and does not purport to usurp the mandates of the statute of limitations. *F.W. Woolworth Co. v. State Dept. of Rev.*, 699 P.2d 1 (Colo. App. 1984).

In order to enforce liens for sales taxes, the department of revenue may activate its liens by recording the notice of delinquency pursuant to this section or by the more immediate means of distraint in accordance with § 39-21-114. *ITT Diversified Credit Corp. v. Couch*, 669 P.2d 1355 (Colo. 1983).

Applied in *Dye Constr. Co. v. Dolan*, 41 Colo. App. 293, 589 P.2d 497 (1978).

39-26-119. License and tax additional. The license and tax imposed by this part 1 shall be in addition to all other licenses and taxes imposed by law, except as otherwise provided in this part 1.

Source: L. 35: p. 1017, § 15. CSA: C. 144, § 29. L. 37: p. 1096, § 1. CRS 53: § 138-6-28. C.R.S. 1963: § 138-5-28.

39-26-120. False or fraudulent return, statement - penalty. (1) It is unlawful for any retailer or vendor to refuse to make any return required to be made in this part 1 or to make any false or fraudulent return or false statement on any return, or fail and refuse to make payment to the executive director of the department of revenue of any taxes collected or due the state, or in any manner evade the collection and payment of the tax, or any part thereof, or for any person or purchaser to fail or refuse to pay such tax, or evade the payment thereof, or to aid or abet another in any attempt to evade the payment of the tax.

(2) Any person willfully violating any of the provisions of this section is guilty of a felony. Any corporation willfully making a false return or a return willfully containing a false statement, is guilty of a felony. Any court of competent jurisdiction of the county in which the offender resides, or, if a corporation, then the county of its principal place of business, shall have jurisdiction to enforce this section.

(3) In addition to the foregoing penalties, any person who knowingly and willfully swears to or verifies any false statement is guilty of perjury in the second degree and, upon conviction thereof, shall be punished in the manner provided by law.

Source: L. 35: p. 1017, § 16. CSA: C. 144, § 30. L. 37: p. 1097, § 1. CRS 53: § 138-6-29. C.R.S. 1963: § 138-5-29. L. 64: p. 326, § 315. L. 72: p. 573, § 63. L. 85: (2) amended, p. 1258, § 12, effective January 1, 1986.

Cross references: For perjury in the second degree and the penalty therefor, see §§ 18-8-503 and 18-1.3-501.

39-26-121. Penalty. Unless otherwise provided in this part 1, any person guilty of a felony, as defined and declared in this part 1, upon conviction thereof, shall be punished as provided by section 39-21-118.

Source: L. 35: p. 1018, § 17. CSA: C. 144, § 31. L. 37: p. 1097, § 1. CRS 53: § 138-6-30. C.R.S. 1963: § 138-5-30. L. 85: Entire section amended, p. 1258, § 13, effective January 1, 1986.

39-26-122. Administration. The administration of this part 1 is vested in and shall be exercised by the executive director of the department of revenue who shall prescribe forms and reasonable rules and regulations in conformity with this part 1 for the making of returns, for the ascertainment, assessment, and collection of the taxes imposed under this part 1, and for the proper administration and enforcement of this part 1.

Source: L. 35: p. 1018, § 18. CSA: C. 144, § 32. L. 37: p. 1097, § 1. CRS 53: § 138-6-31. C.R.S. 1963: § 138-5-31.

ANNOTATION

Injunction prohibiting executive director from promulgating rules and regulations is improper interference with the executive branch of government. Colo. Coll. v. Heckers, 33 Colo. App. 219, 517 P.2d 419 (1973).

Because courts cannot interfere until director exercises authority. Actions of the execu-

tive director are subject to judicial review, but until he has exercised his authority, the courts may not interfere with the administrative authority vested in him. Colo. Coll. v. Heckers, 33 Colo. App. 219, 517 P.2d 419 (1973).

Applied in Montgomery Ward & Co. v. State Dept. of Rev., 628 P.2d 85 (Colo. 1981).

39-26-122.5. Collection of sales tax - enhanced efficiencies - intergovernmental agreements with local governments - legislative declaration. (1) The general assembly hereby finds and declares that:

(a) It is in the best interest of the state, local governments, and taxpayers to have sales tax collected in the most efficient and effective manner feasible;

(b) Sales taxes can be administered and collected most efficiently when the governmental entities that collect the taxes cooperate and share responsibilities to collect and distribute revenues from the taxes;

(c) The administrative burden on taxpayers is lessened when governmental entities cooperate and agree on the processes used to administer and collect sales taxes;

(d) Broad authority and precedent exist for governmental entities to operate more efficiently and effectively by contracting with each other to cooperate in carrying out their respective responsibilities;

(e) The purpose of this section is to encourage the state to work cooperatively with counties and other local governments in the administration and collection of sales taxes in the state to enhance efficiencies and procedures for the benefit of both the department of revenue and local governments.

(2) The executive director of the department of revenue may enter into an intergovernmental agreement with any county for the purpose of enhancing the systemic efficiencies and procedures used in the collection of state and local sales taxes. Such agreement shall be entered into on behalf of and for the benefit of both the county and the department. In addition, a municipality may be included as a party to the agreement to further the same efficiencies and procedures to be enhanced by the agreement between the executive director and a county. The agreement may allow the parties to share in providing any function or service lawfully authorized to each of the parties, including the sharing of costs, information, or duties related to the collection of sales taxes within the boundaries of the county.

(3) The executive director of the department of revenue shall annually provide information to the finance committees of the house of representatives and the senate, or any successor committees, on any agreements entered into in accordance with the provisions of this section and any enhanced effectiveness or procedures that have been achieved as result of the agreements. Such information shall be incorporated into an existing report provided on annual basis by the executive director to the committees.

Source: L. 2009: Entire section added, (HB 09-1130), ch. 229, p. 1042, § 2, effective August 5.

39-26-123. Receipts - disposition - transfers of general fund surplus - sales tax holding fund - creation - definitions. (1) As used in this section, unless the context otherwise requires:

(a) “Net revenue” means the gross amount of sales and use tax receipts collected under the provisions of this article, less a fee retained by vendors for the collection and remittance of the tax pursuant to section 39-26-105 (1) and less refunds and adjustments made by the department of revenue in conjunction with its collection and enforcement duties under this article.

(a.5) (Deleted by amendment, L. 2011, (HB 11-1043), ch. 266, p. 1213, § 24, effective July 1, 2011.)

(b) (I) “Sales and use taxes attributable to sales or use of vehicles and related items” means the net revenue raised from the state sales and use taxes imposed pursuant to this article on the sales or use of new or used motor vehicles, including motor homes, motor vehicle batteries, tires, parts, or accessories, utility trailers, camper coaches, or camper trailers.

(II) With respect to sales tax, “related items” includes only items sold by persons whose primary business activity is the sale or service of motor vehicles or related items.

(2) The sales and use tax holding fund is hereby created in the state treasury and shall be administered by the state treasurer. The fund shall consist of moneys transferred to the fund pursuant to subsection (3.5) of this section. Interest and income earned on the deposit and investment of moneys in the fund shall be credited to the fund and shall not revert to the general fund of the state or to any other fund. Moneys in the fund shall be transferred from the fund only to the highway users tax fund created in section 43-4-201, C.R.S., and the general fund and only in the manner specified in subsection (4) of this section.

(3) (a) For any state fiscal year commencing on or after July 1, 2006, eighty-five percent of all net revenue collected under the provisions of this article shall be credited to the old age pension fund created in section 1 of article XXIV of the state constitution. The remaining fifteen percent shall be allocated between the general fund and the older Coloradans cash fund created in section 26-11-205.5 (5), C.R.S., and credited to the funds by the state treasurer as follows:

(I) (Deleted by amendment, L. 2009, (SB 09-228), ch. 410, p. 2266, § 21, effective July 1, 2009.)

(II) (A) (Deleted by amendment, L. 2007, p. 1386, 1, effective July 1, 2007.)

(B) (Deleted by amendment, L. 2008, p. 869, § 1, effective July 1, 2008.)

(C) and (D) (Deleted by amendment, L. 2009, (SB 09-228), ch. 410, p. 2266, § 21, effective July 1, 2009.)

(E) For any state fiscal year commencing on or after July 1, 2012, fifteen percent of all net revenue, less eight million dollars, to the general fund.

(III) (A) (Deleted by amendment, L. 2007, p. 1386, 1, effective July 1, 2007.)

(B) (Deleted by amendment, L. 2008, p. 869, § 1, effective July 1, 2008.)

(C) (Deleted by amendment, L. 2009, (SB 09-228), ch. 410, p. 2266, § 21, effective July 1, 2009.)

(D) For any state fiscal year commencing on or after July 1, 2008, eight million dollars to the older Coloradans cash fund.

(IV) (A) (Deleted by amendment, L. 2009, (SB 09-228), ch. 410, p. 2266, § 21, effective July 1, 2009.)

(B) (Deleted by amendment, L. 2011, (SB 11-210), ch. 187, p. 720, § 3, effective July 1, 2012.)

(b) (Deleted by amendment, L. 2009, (SB 09-228), ch. 410, p. 2266, § 21, effective July 1, 2009.)

(3.5) For each state fiscal year commencing on or after the first state fiscal year in which an appropriation or transfer is permitted pursuant to section 24-75-219 (2) (d), C.R.S., the general assembly may appropriate or transfer, in its sole discretion, moneys from the general fund to the sales and use tax holding fund.

(4) (a) Except as otherwise provided in sub-subparagraph (B) of subparagraph (VI) of this paragraph (a) and subsection (4.5) of this section, all moneys in the sales and use tax holding fund shall be transferred to the highway users tax fund, as follows:

(I) to (III) (Deleted by amendment, L. 2009, (SB 09-228), ch. 410, p. 2266, § 21, effective July 1, 2009.)

(IV) If the revenue estimate prepared by the staff of the legislative council in December of state fiscal year 2017-18 or in December of any succeeding state fiscal year indicates that the amount of total general fund revenues for the state fiscal year will be sufficient to maintain the four percent or higher reserve required by section 24-75-201.1 (1), C.R.S., on February 1 of the fiscal year the state treasurer shall transfer from the sales and use tax holding fund to the highway users tax fund an amount equal to the lesser of:

(A) Fifty percent of the amount estimated in the December revenue estimate to be accrued and transferred to the highway users tax fund pursuant to this section for the entire fiscal year; or

(B) The balance of the sales and use tax holding fund.

(V) If the revenue estimate prepared by the staff of the legislative council in March of state fiscal year 2017-18 or in March of any succeeding state fiscal year indicates that the amount of total general fund revenues for the state fiscal year will be sufficient to maintain the four percent or higher reserve required by section 24-75-201.1 (1), C.R.S., on April 15 of the fiscal year the state treasurer shall transfer from the sales and use tax holding fund to the highway users tax fund the lesser of:

(A) The amount needed to ensure that the cumulative amount transferred from the sales and use tax holding fund to the highway users tax fund through April 15 equals seventy-five percent of the amount estimated in the March revenue estimate to be accrued and transferred to the highway users tax fund pursuant to this section for the entire fiscal year; or

(B) The balance of the sales and use tax holding fund.

(VI) (A) Effective June 30 of state fiscal year 2006-07, and effective June 30 of each state fiscal year thereafter, the state controller shall accrue all moneys in the sales and use tax holding fund as of that date to the highway users tax fund.

(B) Notwithstanding the provisions of sub-subparagraph (A) of this subparagraph (VI), the state controller shall reduce the amount accrued to the highway users tax fund pursuant to said sub-subparagraph and accrue moneys in the sales and use tax holding fund to the general fund to the extent necessary to ensure that the amount of general fund revenues for the state fiscal year is sufficient to maintain the four percent reserve required by section 24-75-201.1 (1), C.R.S.

(C) The state treasurer shall transfer, out of the amounts accrued by the state controller pursuant to sub-subparagraphs (A) and (B) of this subparagraph (VI), on September 20, 2007, and on September 20 of each succeeding fiscal year, the amounts needed to ensure that the cumulative amounts required to be accrued and transferred from the sales and use tax holding fund to the highway users tax fund and, if applicable to the general fund, equal ninety percent of the aggregate amounts required to be accrued and transferred to the funds pursuant to this section for the entire preceding fiscal year. The state treasurer shall transfer the remainder of the amounts accrued pursuant to said sub-subparagraphs on the date on which the state controller distributes the comprehensive annual financial report of the state.

(b) If a change in tax policy resulting in a significant reduction of general fund revenues is implemented, the general assembly shall:

(I) Examine the exception set forth in sub-subparagraph (B) of subparagraph (VI) of paragraph (a) of this subsection (4) to the general requirement set forth in paragraph (a) of this subsection (4) that all moneys in the sales and use tax holding fund be accrued and transferred to the highway users tax fund and determine whether the exception should be modified in light of the change.

(II) (Deleted by amendment, L. 2009, (SB 09-228), ch. 410, p. 2266, § 21, effective July 1, 2009.)

(4.5) (a) The state treasurer shall not transfer any moneys from the sales and use tax holding fund to the highway users tax fund during state fiscal years 2008-09 and 2009-10.

(b) On June 30, 2009, and June 30, 2010, the state treasurer shall transfer the balance of the sales and use tax holding fund as of that date, as applicable, to the general fund.

(5) (Deleted by amendment, L. 2009, (SB 09-228), ch. 410, p. 2266, § 21, effective July 1, 2009.)

(6) (a) For any state fiscal year commencing on or after July 1, 2010, the general assembly shall annually appropriate the first two million dollars of sales taxes attributable to sales taxes remitted, pursuant to this article, by persons or entities licensed pursuant to article 43.3 of title 12, C.R.S., or equally appropriate the sales taxes attributable to sales taxes remitted, pursuant to this article, by persons or entities licensed pursuant to article 43.3 of title 12, C.R.S., if less than two million dollars is generated.

(b) (I) One half of the moneys described in paragraph (a) of this subsection (6) shall be appropriated to the department of human services to be used for the circle program that provides intensive inpatient treatment for adults who suffer from co-occurring disorders at the Colorado mental health institute at Pueblo.

(II) One half of the moneys described in paragraph (a) of this subsection (6) shall be appropriated to the department of health care policy and financing for screening, brief intervention, and referral to treatment for individuals at risk of substance abuse pursuant to section 25.5-5-202 (1) (u), C.R.S.

Source: L. 37: p. 1098, § 1. CSA: C. 144, § 33. CRS 53: § 138-6-32. C.R.S. 1963: § 138-5-32. L. 64: p. 658, § 18. L. 79: Entire section R&RE, p. 1469 § 1, effective July 1. L. 81: (2)(c) amended, p. 1890, § 1, effective June 12. L. 83: (2)(c)(I)(D) amended, p. 1522, § 8, effective March 22; (2)(c)(I)(E) amended and (2)(c)(I)(E.5) added, p. 2098, § 10, effective October 13. L. 84: (2)(c)(I)(E.5) amended, p. 1142, § 4, effective June 7. L. 85: (2)(c)(I)(G) amended and (2)(c)(V) repealed, pp. 1268, 1271, §§ 6, 12, effective May 30. L. 86: (2)(c)(I)(G) amended, p. 1120, § 20, effective July 1. L. 87: Entire section R&RE, p. 1553, § 1, effective July 1. L. 97: Entire section amended, p. 1531, § 1, effective July 1. L. 98: (1), (2)(a)(I)(A), (2)(d), and (2)(e) amended, p. 905, § 3, effective

May 26. **L. 99:** (1), (2)(a)(I)(A), (2)(a)(III), (2)(d), and (2)(e) amended, p. 561, § 1, effective May 7. **L. 2000:** (2)(a)(I)(A) amended and (2)(a)(I)(A.6) added, p. 901, § 2, effective May 24; (2)(a)(I)(A) amended and (2)(a)(I)(A.8) added, p. 1436, § 5, effective May 31; (2)(a)(I)(A.7) added, p. 552, § 7, effective July 1; (2)(a)(I)(A) amended, p. 1360, § 46, effective July 1, 2001; (2)(a)(I)(A.5) added, p. 1425, § 2, effective July 1, 2001. **L. 2001:** (2)(a)(I)(A.6) amended, p. 1463, § 2, effective June 6. **L. 2001, 2nd Ex. Sess.:** (2)(a)(I)(A) and (2)(a)(II) amended and (2)(a)(I)(A.9) added, p. 35, § 1, effective November 9. **L. 2002:** (2)(a)(I)(A) and (2)(a)(I)(A.9) amended and (2)(a)(I.5) added, p. 145, § 2, effective March 27; (2)(a)(I)(A.6) amended, p. 149, § 2, effective March 27; (2)(a)(I)(A) amended and (2)(a.5) added, p. 389, § 3, effective April 30; (2)(a.5)(III) amended, p. 682, § 4, effective May 28; (2)(a)(I)(A), (2)(a)(I)(B), and IP(2)(b) amended and (4) added, p. 914, § 2, effective May 31; (2)(a)(I)(B) and IP(2)(b) amended and (4) added, p. 902, § 3, effective May 31. **L. 2003:** (4) amended, p. 1538, § 1, effective May 1; (2)(a)(I)(B) amended, p. 2636, § 3, effective June 5; (3) amended, p. 1552, § 1, effective July 1. **L. 2006:** (2)(a)(I)(A) and (4)(a) amended and (5) added, p. 938, § 2, effective July 1; (3) amended, p. 2022, § 118, effective July 1; entire section R&RE, p. 1598, § 1, effective July 2. **L. 2007:** IP(3)(a) amended, p. 2049, § 97, effective June 1; IP(3)(a), (3)(a)(II), and (3)(a)(III) amended, p. 1386, § 1, effective July 1. **L. 2008:** (3)(a)(II) and (3)(a)(III) amended, p. 869, § 1, effective July 1; (3)(a)(II)(D) and (3)(a)(IV) amended and (3)(a)(II)(E) added, p. 872, § 2, effective August 5. **L. 2009:** IP(4)(a) amended and (4.5) added, (SB 09-278), ch. 212, p. 965, § 2, effective May 1; (2), IP(3)(a), (3)(a)(I), (3)(a)(II)(C), (3)(a)(II)(D), (3)(a)(II)(E), (3)(a)(III)(C), (3)(a)(IV)(A), (3)(b), IP(4)(a), (4)(a)(I), (4)(a)(II), (4)(a)(III), IP(4)(a)(IV), IP(4)(a)(V), (4)(a)(VI)(B), (4)(b)(I), (4)(b)(II), and (5) amended and (3.5) added, (SB 09-228), ch. 410, p. 2266, § 21, effective July 1. **L. 2010:** (1)(a.5) added, (HB 10-1284), ch. 355, p. 1686, § 8, effective July 1; (6) added, (HB 10-1284), ch. 355, p. 1686, § 9, effective August 11. **L. 2011:** (1)(a.5), (6)(a), and (6)(b)(I) amended, (HB 11-1043), ch. 266, p. 1213, § 24, effective July 1; IP(3)(a), (3)(a)(II)(E), and (3)(a)(IV)(B) amended, (SB 11-210), ch. 187, p. 720, § 3, effective July 1, 2012.

Editor's note: (1) Amendments to this section by House Bill 00-1259, House Bill 00-1072, and Senate Bill 00-011 were harmonized.

(2) Amendments to subsection (2)(a)(I)(A) by House Bill 02-1276, House Bill 02-1389, and House Bill 02-1445 were harmonized.

(3) Subsection (4) was originally numbered as (3) in House Bill 02-1209 but has been renumbered on revision for ease of location.

(4) Subsections (2)(a)(I)(A) and (4)(a) were amended and (5) was enacted in House Bill 06-1018. Those amendments and enactment were superseded by the repeal and reenactment of the section in House Bill 06-1398.

(5) Subsection (3) was amended in Senate Bill 06-219. Those amendments were superseded by the repeal and reenactment of the section in House Bill 06-1398.

(6) Amendments to the introductory portion to subsection (4)(a) by Senate Bill 09-228 and Senate Bill 09-278 were harmonized.

Cross references: For the old age pension fund, see article XXIV of the state constitution and § 26-2-115.

39-26-123.1. Credit of sales and use tax receipts to Colorado water conservation board construction fund - terminates July 1, 1982 - repeal. (Repealed)

Source: **L. 79:** Entire section added, p. 1362, § 3, effective July 1.

Editor's note: Subsection (2) provided for the repeal of this section, effective July 1, 1982. (See L. 79, p. 1362.)

39-26-124. Applicability to banks. The provisions of this part 1 shall apply to national banking associations and to banks organized and chartered under the laws of this state.

Source: **L. 70:** p. 399, § 1. **C.R.S. 1963:** § 138-5-44.

39-26-125. Limitations. The taxes for any period, together with the interest thereon and penalties with respect thereto, imposed by this part 1 shall not be assessed, nor shall any notice of lien be filed, or distraint warrant issued, or suit for collection be instituted, nor any other action to collect the same be commenced, more than three years after the date on which the tax was or is payable; nor shall any lien continue after such period, except for taxes assessed before the expiration of such period, notice of lien with respect to which has been filed prior to the expiration of such period, in which cases such lien shall continue only for one year after the filing of notice thereof. In the case of a false or fraudulent return with intent to evade tax, the tax, together with interest and penalties thereon, may be assessed, or proceedings for the collection of such taxes, may be begun, at any time. Before the expiration of such period of limitation, the taxpayer and the executive director of the department of revenue may agree in writing to an extension thereof, and the period so agreed on may be extended by subsequent agreements in writing.

Source: L. 43: p. 541, § 1. CSA: C. 144, § 47. CRS 53: § 138-6-42. C.R.S. 1963: § 138-5-42.

39-26-126. Legislative finding as to revenues for old age pension fund. The general assembly finds that sections 39-26-105 (1), 39-26-106 (2) (a), 39-26-109, 39-26-112, 39-26-717 (1), and 39-26-714 (1) repeal no law that provides revenue for the old age pension fund and amend no law so as to reduce the revenue provided for the old age pension fund, except as is allowed by article XXIV of the state constitution.

Source: L. 65: p. 1127, § 9. C.R.S. 1963: § 138-5-43. L. 76: Entire section amended, p. 319, § 77, effective May 20. L. 77: Entire section amended, p. 1810, § 2, effective May 14. L. 79: Entire section amended, p. 1429, § 12, effective July 3. L. 2002: Entire section amended, p. 1363, § 21, effective July 1. L. 2004: Entire section amended, p. 1045, § 16, effective July 1.

39-26-127. Legislation modifying the state sales tax base - no impact on local government sales tax bases - no expansion of local authority to levy sales tax. (1) Notwithstanding the provisions of section 29-2-105 (1) (d), C.R.S., any provision of title 32, C.R.S., or any other provision of law, the levying of sales tax on, exemption from sales tax for, or local option to levy sales tax on or provide an exemption from sales tax for any tangible personal property or services under the sales tax ordinance or resolution of any county, municipality, special district, authority, or other local government or political subdivision of the state shall not be affected in any way by the elimination, suspension, or modification of any sales tax exemption or any other legislative modification of the state sales tax base resulting from the enactment of any of the following bills:

- (a) House Bill 10-1189, enacted in 2010;
- (b) House Bill 10-1190, enacted in 2010;
- (c) House Bill 10-1191, enacted in 2010;
- (d) House Bill 10-1194, enacted in 2010;
- (e) House Bill 10-1195, enacted in 2010.

(2) This section does not create or expand, and shall not be construed to create or expand, any authority of any county, municipality, special district, authority, or other local government or political subdivision of the state to levy sales tax.

Source: L. 2010: Entire section added, (HB 10-1189), ch. 5, p. 39, § 3, effective February 24; entire section added, (HB 10-1190), ch. 6, p. 42, § 4, effective February 24; entire section added, (HB 10-1191), ch. 7, p. 47, § 5, effective February 24; entire section added, (HB 10-1194), ch. 10, p. 60, § 3, effective February 24; entire section added, (HB 10-1195), ch. 11, p. 63, § 4, effective February 24.

Editor's note: The provisions of this section, as added by House Bill 10-1189, House Bill 10-1190, House Bill 10-1191, House Bill 10-1194, and House Bill 10-1195, were harmonized.

PART 2

USE TAX

Cross references: For the use of a method in lieu of any required oath or affirmation by a person making any return or any application for refund or protest pursuant to this part 2, see § 24-12-108.

39-26-201. Definitions. In addition to the definitions in section 39-26-102, as used in this part 2, unless the context otherwise requires:

(1) "Acquisition charges or costs" includes "purchase price", as defined in section 39-26-102 (7).

(2) "Person" means an individual, corporation, limited liability company, partnership, firm, joint venture, association, estate, trust, receiver, or group acting as a unit and includes the plural as well as the singular number.

(3) "Storage" or "storing" means any keeping or retention of, or exercise of dominion or control over, tangible personal property in this state.

Source: L. 37: p. 1101, § 1. CSA: C. 144, § 40. CRS 53: § 138-6-39. C.R.S. 1963: § 138-5-39. L. 77: Entire section R&RE, p. 290, § 73, effective June 29. L. 90: (2) amended, p. 458, § 41, effective April 18.

39-26-202. Authorization of tax. (1) (a) Except as otherwise provided in paragraph (b) of this subsection (1) and in subsection (3) of this section, there is imposed and shall be collected from every person in this state a tax or excise at the rate of three percent of storage or acquisition charges or costs for the privilege of storing, using, or consuming in this state any articles of tangible personal property purchased at retail.

(b) On and after January 1, 2001, there is imposed and shall be collected from every person in this state a tax or excise at the rate of two and ninety one-hundredths percent of storage or acquisition charges or costs for the privilege of storing, using, or consuming in this state any articles of tangible personal property purchased at retail.

(c) Such tax shall be payable to and shall be collected by the executive director of the department of revenue and shall be computed in accordance with schedules or systems approved by said executive director. The transfer of wireless telecommunication equipment as an inducement to enter into or continue a contract for telecommunication services that are taxable pursuant to part 1 of this article shall not be construed to be storage, use, or consumption of such equipment by the transferor.

(2) Notwithstanding the three percent rate provisions of subsection (1) of this section, for the period May 1, 1983, through July 31, 1984, the rate of the tax imposed pursuant to this section shall be three and one-half percent.

(3) (a) Notwithstanding the rate provisions of paragraphs (a) and (b) of subsection (1) of this section, for any fiscal year commencing on or after July 1, 2000, if the revenue estimate prepared by the staff of the legislative council in June of the calendar year in which that fiscal year ends indicates that the aggregate amount of state revenues will exceed the limitation on state fiscal year spending imposed by section 20 (7) (a) of article X of the state constitution for that fiscal year by three hundred fifty million dollars or more, as adjusted pursuant to paragraph (b) of this subsection (3), and voters statewide either have not authorized the state to retain and spend all of the excess state revenues or have authorized the state to retain and spend only a portion of the excess state revenues for that fiscal year, the tax imposed pursuant to subsection (1) of this section shall be imposed upon any sale of a new or used commercial truck, truck tractor, tractor, semitrailer, or vehicle used in combination therewith that has a gross vehicle weight rating in excess of twenty-six thousand pounds for the period commencing on July 1 of the calendar year in which that fiscal year ends through June 30 of the immediately subsequent calendar year, at a rate of one one-hundredth of one percent.

(b) (I) No later than October 1 of any given calendar year commencing on or after January 1, 2001, the executive director shall annually adjust the dollar amount specified in paragraph (a) of this subsection (3) to reflect the rate of growth of Colorado personal

income for the calendar year immediately preceding the calendar year in which such adjustment is made. For purposes of this subparagraph (I), "the rate of growth of Colorado personal income" means the percentage change between the most recent published annual estimate of total personal income for Colorado, as defined and officially reported by the bureau of economic analysis in the United States department of commerce for the calendar year immediately preceding the calendar year in which the adjustment is made and the most recent published annual estimate of total personal income for Colorado, as defined and officially reported by the bureau of economic analysis in the United States department of commerce for the calendar year prior to the calendar year immediately preceding the calendar year in which the adjustment is made.

(II) Upon calculating the adjustment of said dollar amount in accordance with subparagraph (I) of this paragraph (b), the executive director shall notify in writing the executive committee of the legislative council created pursuant to section 2-3-301 (1), C.R.S., of the adjusted dollar amount and the basis for the adjustment. Such written notification shall be given within five working days after such calculation is completed, but such written notification shall be given no later than October 1 of the calendar year.

(III) It is the function of the executive committee of the legislative council to review and approve or disapprove such adjustment of said dollar amount within twenty days after receipt of such written notification from the executive director. Any adjustment that is not approved or disapproved by the executive committee within said twenty days shall be automatically approved; except that, if within said twenty days the executive committee schedules a hearing on such adjustment, such automatic approval shall not occur unless the executive committee does not approve or disapprove such adjustment after the conclusion of such hearing. Any hearing conducted by the executive committee pursuant to this subparagraph (III) shall be concluded no later than twenty-five days after receipt of such written notification from the executive director.

(IV) (A) If the executive committee of the legislative council disapproves any adjustment of said dollar amount calculated by the executive director pursuant to this paragraph (b), the executive committee shall specify such adjusted dollar amount to be utilized by the executive director. Any adjusted dollar amount specified by the executive committee pursuant to this sub-subparagraph (A) shall be calculated in accordance with the provisions of this paragraph (b).

(B) For the purpose of determining whether the use tax rate reduction authorized by paragraph (a) of this subsection (3) is to be allowed for any given income tax year, the executive director shall not utilize any adjusted dollar amount that has not been approved pursuant to subparagraph (III) of this paragraph (b) or otherwise specified pursuant to sub-subparagraph (A) of this subparagraph (IV).

(V) If one or more ballot questions are submitted to the voters at a statewide election to be held in November of any calendar year commencing on or after January 1, 2001, that seek authorization for the state to retain and spend all or any portion of the amount of excess state revenues for the state fiscal year ending during said calendar year, the executive director shall not determine whether the use tax rate reduction authorized by paragraph (a) of this subsection (3) shall be allowed and shall not promulgate rules containing said use tax rate reduction until the impact of the results of said election on the amount of the excess state revenues to be refunded is ascertained.

(c) The general assembly finds and declares that reducing the rate of the use tax imposed on the storage, use, or consumption of a new or used commercial truck, truck tractor, tractor, semitrailer, or vehicle used in combination therewith that has a gross vehicle weight rating in excess of twenty-six thousand pounds is a reasonable method of refunding excess state revenues required to be refunded in accordance with section 20 (7) (d) of article X of the state constitution.

(d) Any state use tax rate reduction allowed pursuant to this section shall be published in rules promulgated by the executive director of the department of revenue in accordance with article 4 of title 24, C.R.S., and shall be included in such notices and publications as are customarily issued by the department of revenue on at least a quarterly basis concerning exemptions from the state sales and use tax.

Source: L. 37: p. 1098, § 1. CSA: C. 144, § 34. L. 45: p. 580, § 5. CRS 53: § 138-6-33. C.R.S. 1963: § 138-5-33. L. 65: p. 1125, § 6. L. 65, 1st Ex. Sess.: p. 17, § 2. L. 77: Entire section R&RE, p. 1825, § 2, effective July 1. L. 83: Entire section amended, p. 1518, § 4, effective March 22; (2) amended, p. 2098, § 7, effective October 13. L. 84: (2) amended, p. 1142, § 5, effective June 7. L. 96: (1) amended, p. 758, § 3, effective May 22. L. 2000: (1) amended and (3) added, p. 1434, § 4, effective May 31.

Cross references: For the legislative declaration contained in the 1996 act amending this section, see section 1 of chapter 160, Session Laws of Colorado 1996.

ANNOTATION

Law reviews. For article, "Colorado Sales and Use Tax Consequences in Sales of Businesses", see 11 Colo. Law. 679 (1982). For article, "Recent Developments in Colorado Sales and Use Taxes", see 18 Colo. Law. 2101 (1989).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Denial of trade-in allowance on out-of-state purchase unconstitutional. It is constitutionally impermissible for the Colorado taxing authorities to deny a trade-in allowance in computing the use tax on a motor vehicle purchased outside the state when such a credit is allowed when the vehicle was purchased in Colorado. Such unequal treatment is discriminatory and constitutes an impermissible burden on interstate commerce. *Matthews v. Dept. of Rev.*, 193 Colo. 44, 562 P.2d 415 (1977).

When issue of material fact existed as to whether general partnership had been assessed with a use tax, trial court erred in entering motion for summary judgment in favor of individual partner on grounds that partner could not be held jointly and severally liable for deficiency owed by partnership. *AF Prop. v. Dept. of Rev.*, 852 P.2d 1267 (Colo. App. 1992).

Use taxes equalize burden between in-state and out-of-state purchasers. Use taxes are enacted primarily to equalize the tax burden as between those who purchase within and without the state. *Matthews v. Dept. of Rev.*, 193 Colo. 44, 562 P.2d 415 (1977).

Use tax is not a separate tax from the sales tax and should not be viewed in isolation. *Matthews v. Dept. of Rev.*, 193 Colo. 44, 562 P.2d 415 (1977).

The use tax is supplementary to the sales tax. *Matthews v. Dept. of Rev.*, 193 Colo. 44, 562 P.2d 415 (1977).

Multiple taxation is to be avoided. *CF&I Steel Corp. v. Charnes*, 637 P.2d 324 (Colo. 1981).

Use tax no greater than necessary to compensate for earlier avoided sales tax. Given the supplementary nature and equalizing function of the use tax, the burden on the taxpayer should be no greater than necessary to compensate for the sales tax originally avoided on pur-

chases of materials for manufacturing and resale. A levy upon the "full finished goods cost" or "capitalized cost" of goods withdrawn from a company's inventory inevitably would have the effect of taxing the company's labor and overhead. In effect, it would amount to a value added tax. *Int'l. Bus. Machs. Corp. v. Charnes*, 198 Colo. 374, 601 P.2d 622 (1979).

Only tangible personalty purchased at retail subject to use tax. While the use of tangible personal property may constitute a taxable event, only that tangible personal property purchased at retail is subject to the use tax. *CF&I Steel Corp. v. Charnes*, 637 P.2d 324 (Colo. 1981).

Use tax liability depends on use, not ownership. *Tri-State Generation & Transmission Ass'n v. Dept. of Rev.*, 636 P.2d 1335 (Colo. App. 1981); *AF Prop. v. Dept. of Rev.*, 852 P.2d 1267 (Colo. App. 1992).

It is the privilege of using property installed in making an improvement on realty that is taxable under this and following sections. The exercise of the privilege of using it results in the incidence of the tax, and no subsequent use, or failure to use, the completed structure can relieve the owner from its payment. *Fifteenth St. Inv. Co. v. People*, 102 Colo. 571, 81 P.2d 764 (1938).

Party controlling construction project "uses" materials. Where a party shares in the direction and control of a construction project, that party "uses" the materials going into the project for use tax purposes. *Tri-State Generation & Transmission Ass'n v. Dept. of Rev.*, 636 P.2d 1335 (Colo. App. 1981).

Contractors purchasing out-of-state supplies for in-state job liable for tax. Painting and electrical contractors who purchase supplies outside the state and use such supplies in a construction job which is delivered complete for a fixed price are liable for the use tax on the supplies. *Craftsman Painters & Decorators, Inc. v. Carpenter*, 111 Colo. 1, 137 P.2d 414 (1942).

Purchase of a laundry business is subject to a use tax deficiency assessment upon the privilege of storing, using, or consuming the tangible personal property so purchased in connection therewith. *Palmer v. Perkins*, 119 Colo. 533, 205 P.2d 785 (1949).

Purchase of bar snacks subject to use tax. Hotel's purchase of bar snacks to promote its bar services is subject to a use tax since the snacks were made available on a complimentary basis and were not purchased for resale. *Broadmoor Hotel v. Dept. of Rev.*, 773 P.2d 627 (Colo. App. 1989).

In considering the meaning of the statutory use tax exemption, the definitions of wholesale

and retail sale established by the general assembly differ from the ordinarily accepted general conception of those terms. *Bedford v. Colo. Fuel and Iron Corp.*, 102 Colo. 538, 81 P.2d 752 (1938); *Hirschfeld Press v. Denver*, 806 P.2d 917 (Colo. 1991).

39-26-203. Exemptions - definitions. (Repealed)

Source: L. 37: p. 1098, § 1. CSA: C. 144, § 35. L. 43: p. 540, § 2. L. 45: p. 577, § 1. CRS 53: § 138-6-34. L. 59: p. 802, §§ 4, 5. C.R.S. 1963: § 138-5-34. L. 67: p. 349, § 1. L. 73: p. 242, § 25. L. 75: (1)(o) amended, p. 1468, § 16, effective July 18. L. 76: (1)(p) and (1)(q) added, p. 788, § 2, effective July 1. L. 77: (1)(c) R&RE and (1)(p) and (1)(q) amended, pp. 1829, 1831, § 2, effective July 1; (1)(r) and (1)(s) added, p. 1834, § 2, effective July 20; (1)(c) R&RE and (1)(j) amended, p. 1837, § 2, effective January 1, 1978. L. 78: (1)(e) amended, p. 507, § 3, effective March 8; (1)(t) and (1)(u) added, p. 515, § 2, effective April 4; (1)(v) added, p. 512, effective May 5; (1)(a) amended, p. 509, § 4, effective July 1. L. 79: (1)(w) added, p. 1466, § 5, effective June 7; (1)(y) added, p. 1428, § 11, effective July 1; (1)(v) amended, p. 1428, § 11, effective July 3; (1)(c) amended, (1)(v) repealed, and (1)(v.1), (1)(x), and (1)(z) added, pp. 1428, 1440, 1501, §§ 11, 27, 28, effective January 1, 1980. L. 80: (1)(z) amended, p. 733, § 2, effective May 20. L. 82: (1)(z) amended, p. 571, § 3, effective April 27; (1)(f) and (1)(g) amended, p. 569, § 3, effective July 1. L. 84: (1)(aa) added, p. 1021, § 2, effective March 5. L. 88: (1)(c) amended, p. 1090, § 5, effective January 1, 1989. L. 90: (1)(bb) added, p. 1741, § 3, effective April 17. L. 91: (1)(c) amended, p. 2397, § 21, effective July 1; (1)(cc) added, p. 1968, § 2, effective July 1, 1992. L. 91, 1st Ex. Sess.: (1)(c) amended, p. 7, § 10, effective July 1. L. 92: (1)(dd) and (1)(ee) added, p. 2259, § 2, effective July 1. L. 94: (1)(o) amended, p. 2568, § 89, effective January 1, 1995. L. 95: (1)(g) amended, p. 1214, § 4, effective May 31. L. 96: (1)(dd) and (1)(ee) amended, p. 1242, § 101, effective August 7. L. 98: (1)(ff) added, p. 494, § 1, effective April 22; (1)(gg) added, p. 736, § 4, effective May 18. L. 99: (1)(II) added, p. 980, § 2, effective May 28; (1)(e) amended, p. 1272, § 3, effective June 3; (1)(bb) RC&RE, p. 1298, § 3, effective June 3; (1)(hh) and (1)(ii) added, p. 1274, § 2, effective July 1; (1)(kk) added, p. 1304, § 2, effective July 1; (1)(mm) added, p. 1324, § 3, effective July 1; (1)(jj) added, p. 1355, § 3, effective January 1, 2000. L. 2000: IP (1)(hh)(II) amended, p. 550, § 4, effective July 1; (1)(gg) amended, p. 736, § 4, effective August 2; (1)(c)(I) amended, p. 1938, § 19, effective October 1. L. 2001: IP(1)(hh)(II) amended, p. 162, § 2 effective July 1; IP(1)(hh)(II) amended, p. 382, § 2, effective July 1; (1)(nn) added, p. 1545, § 2, effective July 1. L. 2003: (1)(c)(I) amended, p. 1818, § 7, effective August 6. L. 2004: (1)(b) amended, p. 653, § 2, effective April 26; entire section repealed, p. 1016, § 1, effective July 1.

Editor's note: (1) The provisions of this section were relocated to part 7 of this article. For the location of specific provisions, see the editor's note following each section in said part 7 and the comparative tables located in the back of the index.

(2) House Bill 04-1241 amended subsection (1)(b), effective April 26, 2004, but that amendment did not take effect since this section was repealed by Senate Bill 04-087, effective July 1, 2004. The amendment to subsection (1)(b) by House Bill 04-1241 was relocated to § 39-26-713 (2)(b) and harmonized with Senate Bill 04-087.

39-26-204. Periodic return - collection. (1) (a) Every person subject to the provisions of this part 2 who uses, stores, or consumes tangible personal property in the conduct of a business in this state, which property is purchased either inside or outside this state, and who has not paid the sales or use tax imposed by this article to a retailer shall make a return and remit the tax imposed by this part 2 to the executive director of the department of revenue for the preceding period covered by the remittance on forms prescribed by him,

showing in detail the tangible personal property stored, used, or consumed by said person in the conduct of his business within the state in the preceding period covered by the remittance and on which property the said sales or use tax has not been paid. Every person subject to the provisions of this part 2 shall maintain monthly records of the amount of tax due. At such time as the cumulative tax due at the end of any month is in excess of three hundred dollars, such person shall make a return and remit the tax due before the twentieth day of the following month. If the total tax due in a calendar year is less than three hundred dollars, such person shall make a single return and remittance for such calendar year before January 20 of the following calendar year.

(b) Every person who is subject to the provisions of this part 2 who uses, stores, or consumes tangible personal property not in the conduct of a business, which is purchased either inside or outside this state, who has not paid the sales or use tax imposed by this article to a retailer, shall make a return and remit the tax annually, at the time the Colorado income tax of such person is due and payable as provided in article 22 of this title, on forms prescribed by the executive director, showing in detail the tangible personal property stored, used, or consumed by said persons within this state for the preceding taxable year.

(c) All such returns shall be subscribed by the taxpayer or his agent and shall contain a written declaration that it is made under the penalties of perjury in the second degree.

(2) Every retailer doing business in this state and making sales of tangible personal property for storage, use, or consumption in the state, and not exempted as provided in part 7 of this article, at the time of making such sales or taking the orders therefor, or, if the storage, use, or consumption of such tangible personal property is not then taxable under this part 2, then at the time such storage, use, or consumption becomes taxable under this part 2, shall collect the tax imposed by section 39-26-202, from the purchaser and give to the purchaser a receipt therefor, which receipt shall identify the property, the date sold or the date ordered, and the tax collected and paid. The tax required to be collected by such retailer from such purchaser shall be displayed separately from the advertised price listed on the forms or advertising matter on all sales checks, orders, sales slips, or other proof of sales.

(3) It is unlawful for such retailer or agent to advertise or hold out or state to the public or to any customer, directly or indirectly, that the tax or any part thereof will be assumed or absorbed by such retailer or agent, or that it will not be added to the selling price of the property sold, or, if added, that it or any part thereof will be refunded. The tax required to be collected by such retailer or agent shall be remitted to the state in like manner as otherwise provided in this article for the remittance of sales taxes collected by retailers, and all such retailers or agents collecting the tax imposed by section 39-26-202 shall make returns on forms provided by the executive director at such times and in such manner as is provided for the making of returns in the payment of the sales taxes. The procedure for assessing and collecting said taxes from such retailers or agents, or from the user when not paid to a retailer or agent, shall be the same as provided in this article and article 21 of this title for the collection of sales taxes, including collection by distraint warrant, and said taxes due and owing from any retailer or agent for the storage, use, or consumption of tangible personal property shall bear interest and be subject to the same penalties as is provided in this article and article 21 of this title for nonpayment or delinquencies of sales taxes.

(4) All sums of money paid by the purchaser to the retailer as taxes imposed by this article shall be and remain public money, the property of the state in the hands of such retailer, and he shall hold the same in trust for the sole use and benefit of the state until paid to the executive director of the department of revenue. For failure to so pay to the executive director, such retailer shall be punished as provided by law.

(5) (a) If a person neglects or refuses to make a return in payment of the tax or to pay any tax as required by this article, the executive director of the department of revenue shall make an estimate, based upon the information that may be available, of the amount of taxes due for the period for which the taxpayer is delinquent and shall add thereto a penalty equal to ten percent thereof and interest on the delinquent taxes at the rate imposed under section 39-21-110.5, plus one-half of one percent per month from the date when due. Promptly thereafter, the executive director shall give to the delinquent taxpayer written notice of the

estimated taxes, penalty, and interest, which notice shall be sent by first-class mail as set forth in section 39-21-105.5.

(b) Such estimate shall thereupon become a notice of deficiency as provided in section 39-21-103. At the delinquent taxpayer's request, a hearing shall be held and the executive director shall make a final determination pursuant to said section. The taxpayer may appeal said final determination in the manner provided in section 39-21-105.

Source: L. 37: p. 1100, § 1. CSA: C. 144, § 36. L. 39: p. 507, § 4. CRS 53: § 138-6-35. C.R.S. 1963: § 138-5-35. L. 67: pp. 333, 523, §§ 2, 2. L. 72: p. 573, § 64. L. 84: (1)(a) amended, p. 1022, § 1, effective January 1, 1985. L. 85: (4) and (5) added, p. 1258, § 14, effective January 1, 1986. L. 96: (5)(a) amended, p. 167, § 10, effective July 1. L. 2004: (2) amended, p. 1045, § 17, effective July 1.

ANNOTATION

General assembly intended to force payment of the tax when due. In re Denver & R.G.W.R.R., 27 F. Supp. 983 (D. Colo. 1939).

Valid collection and administration methods required. If an ordinance does not provide for a valid method of collection and administra-

tion of the use tax imposed, it is invalid. Rancho Colo., Inc. v. City of Broomfield, 196 Colo. 444, 586 P.2d 659 (1978).

Applied in Dye Constr. Co. v. Dolan, 41 Colo. App. 293, 589 P.2d 497 (1978).

39-26-204.5. Remittance of tax - electronic database - retailer held harmless. The provisions of section 39-26-105.3 allowing vendors to be held harmless for collecting the incorrect amount of tax due on a purchase when relying on a certified database to determine the jurisdictions to which tax is owed shall apply to any retailer doing business in this state and making sales of tangible personal property for storage, use, or consumption in the state that collects and remits use tax to the department of revenue as provided by law.

Source: L. 2004: Entire section added, p. 768, § 3, effective May 17.

Cross references: For the legislative declaration contained in the 2004 act enacting this section, see section 1 of chapter 231, Session Laws of Colorado 2004.

39-26-204.6. Remittance of tax - determination of address - motor vehicle dealer held harmless. The hold harmless provisions of section 39-26-105.4 shall apply to any licensed motor vehicle dealer doing business in this state and making sales of motor vehicles for storage, use, or consumption in the state that collects and remits use tax to the department of revenue as provided by law.

Source: L. 2009: Entire section added, (HB 09-1230), ch. 232, p. 1066, § 2, effective August 5.

39-26-205. Tax constitutes lien - exemption from lien. (1) The tax imposed by section 39-26-202 shall be a first and prior lien on the tangible personal property stored, used, or consumed, subject only to any valid mortgage or other liens of record on and prior to the recording of notice as required by section 39-26-118 (3), and, when such tax is collected by retailers or agents, shall be a first and prior lien on all the stock of goods or business fixtures of or used by such retailer, excepting goods sold in the ordinary course of business, which lien shall have precedence over all other liens of whatsoever kind or nature, except as to preexisting claims or liens of a bona fide mortgagee, pledgee, judgment creditor, or purchaser whose rights have attached prior to the filing of the notice on property of the taxpayer, other than the goods, stock in trade, and business fixtures of such taxpayer.

(2) Upon default of payment thereof, the executive director of the department of revenue, after demand upon the person owing such tax, may bring an action in his name as executive director in attachment and seize property as authorized by this section to secure

the payment of said tax, interest, and penalties. In any such proceeding, no bond shall be required of the executive director, nor shall any sheriff require from the executive director an indemnifying bond for executing the writ of attachment or levy, and no sheriff shall be liable in damages when acting in accordance with such writs. The remedies provided in this section shall be in addition to all other remedies.

(3) Any taxpayer or person in possession shall provide a copy of any lease pertaining to the assets and property described in subsection (1) of this section to the department of revenue within ten days after seizure by the department of such assets and property. The department shall verify that such lease is bona fide and notify the owner that such lease has been received by the department. The department shall use its best efforts to notify the owner of the real or personal property which might be subject to the lien created in subsection (1) of this section. The real or personal property of an owner who has made a bona fide lease to any taxpayer described in subsection (1) of this section shall be exempt from the lien created therein if such property can reasonably be identified from the lease description or if the lessee is given an option to purchase in such lease and has not exercised such option to become the owner of the property leased. This exemption shall be effective from the date of the execution of the lease. Such exemption shall also apply if the lease is recorded with the county clerk and recorder of the county where the property is located or based on a memorandum of the lease is filed with the department of revenue on such forms as may be prescribed by said department after the execution of the lease at a cost for such filing of two dollars and fifty cents per document. Motor vehicles which are properly registered in this state, showing the lessor as owner thereof, shall be exempt from the lien created in subsection (1) of this section; except that said lien shall apply to the extent that the lessee has an earned reserve, allowance for depreciation not to exceed fair market value, or similar interest which is or may be credited to the lessee. Where the lessor and lessee are blood relatives or relatives by law or have twenty-five percent or more common ownership, a lease between such lessee and such lessor shall not be considered as bona fide for purposes of this section.

(3.5) Any coin-operated vending machine or video or other game machine shall be exempt from the lien created in subsection (1) of this section if:

(a) The machine is placed on the retailer's premises under the terms of a lease or other agreement under which the retailer is given no right to become the owner of the machine;

(b) The machine is plainly marked in a location accessible to agents of the department of revenue with information sufficient to permit identification of the owner of said property; and

(c) The owner of the machine has filed with the department of revenue a schedule listing the machine by serial number and including thereon the owner's full name and the address of his business and such other information as the executive director of the department of revenue may require. To protect the anonymity of owners of property, the executive director of the department of revenue may permit the marking of property covered by this subsection (3.5) to be marked using numbers or other coded identification.

(4) Any retailer who is in possession of property under the terms of a lease, which property is exempt from the lien as provided in this section, may be required by the executive director to remit tax funds due at more frequent intervals than monthly, but no more frequently than semimonthly, or may be required to furnish security for the proper payment of taxes whenever the collection of taxes appears to be in jeopardy.

Source: L. 37: p. 1100, § 1. CSA: C. 144, § 37. L. 39: p. 508, § 5. CRS 53: § 138-6-36. C.R.S. 1963: § 138-5-36. L. 64: p. 327, § 316. L. 69: p. 1138, § 4. L. 77: (3) amended, p. 1803, § 3, effective June 19. L. 89: (3.5) added, p. 1510, § 3, effective April 6. L. 92: (3) amended, p. 2202, § 5, effective April 16.

ANNOTATION

Law reviews. For article, "An Introduction to Tax Liens", see 13 Colo. Law. 399 (1984).

Federal lien possesses priority over inchoate state tax lien. Federal liens take priority

over all competing liens except those which are both earlier in time and choate. State taxes, until due, are uncertain in amount, hence lacking in choateness. *Dir. of Rev. v. United States*, 392 F.2d 307 (10th Cir. 1968).

Lien survives incorporation of sole proprietorship. The department's lien on tangible per-

sonal property on which use taxes are due and unpaid may survive the incorporation of a sole proprietorship. *Dye Constr. Co. v. Dolan*, 41 Colo. App. 293, 589 P.2d 497 (1978).

39-26-206. Failure to make return. Any person who willfully fails or refuses to make the return required in section 39-26-204, or who makes a false or fraudulent return, or who willfully fails to pay any tax owing by him, and any person who aids or abets another in an attempt to evade such tax, shall be punished as provided by section 39-21-118.

Source: L. 37: p. 1101, § 1. CSA: C. 144, § 38. CRS 53: § 138-6-37. C.R.S. 1963: § 138-5-37. L. 85: Entire section amended, p. 1259, § 15, effective January 1, 1986.

39-26-207. Penalty interest on unpaid tax. Any tax due and unpaid under this part 2 shall be a debt to the state, and shall draw interest at the rate imposed under section 39-21-110.5, in addition to the interest provided by section 39-21-109, from the time when due until paid. The executive director of the department of revenue may recover at law the amount of such tax and interest in a suit instituted by the attorney general in the name of the executive director of the department of revenue, and this remedy shall be in addition to all other remedies.

Source: L. 37: p. 1101, § 1. CSA: C. 144, § 39. L. 39: p. 509, § 6. CRS 53: § 138-6-38. C.R.S. 1963: § 138-5-38. L. 64: p. 820, § 6. L. 65: p. 1150, § 3. L. 81: Entire section amended, p. 1867, § 13, effective June 8.

ANNOTATION

Applied in *Dye Constr. Co. v. Dolan*, 41 Colo. App. 293, 589 P.2d 497 (1978).

39-26-208. Collection of use tax - motor vehicles. (1) No registration shall be made of a motor or other vehicle for which registration is required and no certificate of title shall be issued for such vehicle or for a mobile home by the department of revenue or its authorized agent until any tax due upon the storage, use, or consumption thereof pursuant to section 39-26-202 or imposed by ordinance of any municipality or resolution of any county has been paid.

(2) If an applicant for registration and certificate of title for any motor or other vehicle or for a certificate of title for a mobile home fails to show payment of the taxes applicable under this section by means of proper receipts therefor, the department of revenue or its authorized agent shall collect all such applicable taxes at the time such application is made.

(3) Revenues due the state and collected pursuant to this section shall be distributed as are other revenues under this part 2, and revenues due any municipality so collected shall be distributed as specified by contract entered into with the department of revenue pursuant to section 24-35-110, C.R.S.

(4) To facilitate collection of taxes as provided in this section, the governing body of each municipality which has imposed a tax upon storage, use, or consumption shall certify to the department of revenue and to the county clerk and recorder of the county in which such municipality is located a true copy of its current applicable tax ordinances and shall likewise certify any subsequent changes therein.

Source: L. 37: p. 1101, § 1. CSA: C. 144, § 41. CRS 53: § 138-6-40. C.R.S. 1963: § 138-5-40. L. 71: p. 1264, § 2. L. 73: p. 1480, § 6. L. 75: (1) amended, p. 964, § 7, effective July 14. L. 77: (1) and (2) amended, p. 1743, § 7, effective January 1, 1978.

39-26-209. Rules and regulations. The administration of this part 2 is vested in the executive director of the department of revenue, and he shall prescribe forms, rules, and regulations for the administration and enforcement of this part 2.

Source: L. 37: p. 1102, § 1. CSA: C. 144, § 42. CRS 53: § 138-6-41. C.R.S. 1963: § 138-5-41.

39-26-210. Limitations. The taxes for any period, together with the interest thereon and penalties with respect thereto, imposed by this part 2 shall not be assessed, nor shall any notice of lien be filed, or distraint warrant issued, or suit for collection be instituted, nor any other action to collect the same be commenced, more than three years after the date on which the tax was or is payable; nor shall any lien continue after such period, except for taxes assessed before the expiration of such period, notice of lien with respect to which has been filed prior to the expiration of such period, in which cases such lien shall continue only for one year after the filing of notice thereof. In the case of a false or fraudulent return with intent to evade tax, the tax, together with interest and penalties thereon, may be assessed, or proceedings for the collection of such taxes may be begun at any time. Before the expiration of such period of limitation, the taxpayer and the executive director of the department of revenue may agree in writing to an extension thereof, and the period so agreed on may be extended by subsequent agreements in writing.

Source: L. 43: p. 541, § 1. CSA: C. 144, § 47. CRS 53: § 138-6-42. C.R.S. 1963: § 138-5-42.

ANNOTATION

Section 39-21-107 applicable where use taxes assessed, no return filed. It is the intent of the general assembly that § 39-21-107, rather than this section, should be the controlling statute of limitations in the case where use taxes are assessed but no return is filed. *Dye Constr. Co. v. Dolan*, 41 Colo. App. 293, 589 P.2d 497 (1978); *CF&I Steel Corp. v. Charnes*, 637 P.2d 324 (Colo. 1981).

Unlimited waivers of limitation period extend for reasonable time or until terminated. Unlimited waivers of this section's limitations period are generally construed to extend either for a reasonable time or until the waiver is terminated by either party after reasonable notice. *CF&I Steel Corp. v. Charnes*, 637 P.2d 324 (Colo. 1981).

39-26-211. Applicability to banks. The provisions of this part 2 shall apply to national banking associations and to banks organized and chartered under the laws of this state.

Source: L. 70: p. 399, § 1. C.R.S. 1963: § 138-5-44.

39-26-212. Legislation modifying the state use tax base - no impact on local government use tax bases - no expansion of local authority to levy use tax. (1) Notwithstanding the provisions of section 29-2-105 (1) (d), C.R.S., any provision of title 32, C.R.S., or any other provision of law, the levying of use tax on, exemption from use tax for, or local option to levy use tax on or provide an exemption from use tax for any tangible personal property or services under the use tax ordinance or resolution of any county, municipality, special district, authority, or other local government or political subdivision of the state shall not be affected in any way by the elimination, suspension, or modification of any use tax exemption or any other legislative modification of the state use tax base resulting from the enactment of any of the following bills:

- (a) House Bill 10-1189, enacted in 2010;
- (b) House Bill 10-1190, enacted in 2010;
- (c) House Bill 10-1191, enacted in 2010;
- (d) House Bill 10-1194, enacted in 2010;
- (e) House Bill 10-1195, enacted in 2010.

(2) This section does not create or expand, and shall not be construed to create or expand, any authority of any county, municipality, special district, authority, or other local government or political subdivision of the state to levy use tax.

Source: **L. 2010:** Entire section added, (HB 10-1189), ch. 5, p. 39, § 4, effective February 24; entire section added, (HB 10-1190), ch. 6, p. 43, § 5, effective February 24; entire section added, (HB 10-1191), ch. 7, p. 48, § 6, effective February 24; entire section added, (HB 10-1194), ch. 10, p. 60, § 4, effective February 24; entire section added, (HB 10-1195), ch. 11, p. 64, § 5, effective February 24.

Editor's note: The provisions of this section, as added by House Bill 10-1189, House Bill 10-1190, House Bill 10-1191, House Bill 10-1194, and House Bill 10-1195, were harmonized.

PART 3

SALES AND USE TAX - COLLECTION OF TAX BY OUT-OF-STATE RETAILERS

39-26-301 to 39-26-307. (Repealed)

Editor's note: (1) This part 3 was added in 1990 and was not amended prior to its repeal in 1994. For the text of this part 3 prior to 1994, consult the 1993 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

(2) Section 39-26-306 provided for the repeal of this part 3, effective December 31, 1994. (See L. 90, p. 1745.)

PART 4

SALES AND USE TAX REFUND FOR BIOTECHNOLOGY, CLEAN TECHNOLOGY, AND MEDICAL DEVICES

Cross references: For the legislative declaration contained in the 1999 act enacting this part 4, see section 2 of chapter 184, Session Laws of Colorado 1999.

39-26-401. Definitions. As used in this part 4, unless the context otherwise requires:

(1) "Biotechnology" means:

(a) The application of technologies to produce or modify products, to develop microorganisms for specific uses, to identify targets for small pharmaceutical development, or to transform biological systems into useful processes or products; and

(b) The potential endpoints of the resulting products, processes, microorganisms, or targets are for improving human or animal health care outcomes.

(2) "Clean technology" means:

(a) Renewable energy generation technologies, including but not limited to solar, wind, biofuel, and geothermal energy generation technologies;

(b) Products and technologies used in renewable energy development and generation on a commercial scale;

(c) Products and technologies that enhance the efficient storage, distribution, and consumption of energy; and

(d) Products and technologies that mitigate human impact on the environment, including but not limited to products and technologies that facilitate the management of greenhouse gases, water, and waste.

(3) "Medical device" means a therapeutic or diagnostic machine or tool used to improve human or animal health.

(4) "Qualified biotechnology taxpayer" means a C corporation, as defined in section 39-22-103 (2.5), a partnership, as defined in section 39-22-103 (5.6), a limited liability company that is not a C corporation, an S corporation, as defined in section 39-22-103 (10.5), or a sole proprietorship that purchases, stores, uses, or consumes tangible personal

property to be used in Colorado directly and predominately in research and development of biotechnology.

(5) "Qualified clean technology or medical device taxpayer" means a C corporation, as defined in section 39-22-103 (2.5), a partnership, as defined in section 39-22-103 (5.6), a limited liability company that is not a C corporation, an S corporation, as defined in section 39-22-103 (10.5), or a sole proprietorship that employs fifty or fewer full-time employees in Colorado, which taxpayer purchases, stores, uses, or consumes tangible personal property to be used in Colorado directly and predominately in research and development of clean technology or medical devices.

(6) "Research and development" means qualified research as defined by 26 U.S.C. sec. 41 (d) (1).

(7) "Tangible personal property" includes capital equipment, instruments, apparatus, and supplies used in laboratories, including, but not limited to, microscopes, machines, glassware, chemical reagents, computers, computer software, and technical books and manuals.

Source: L. 99: Entire part added, p. 609, § 2, effective May 17. L. 2009: Entire part amended, (HB 09-1035), ch. 371, p. 2011, § 1, effective August 5.

39-26-402. Refund of state sales and use tax for biotechnology - application requirements and procedures. (1) For the calendar year commencing January 1, 1999, and for each calendar year thereafter, each qualified biotechnology taxpayer shall be allowed to claim a refund of all state sales and use tax paid by the qualified biotechnology taxpayer, pursuant to parts 1 and 2 of this article, on the sale, storage, use, or consumption of tangible personal property to be used in Colorado directly and predominately in research and development of biotechnology during that calendar year.

(2) To claim the refund allowed by subsection (1) of this section, a qualified biotechnology taxpayer shall submit a refund application to the department of revenue on a form provided by the department. Such application shall be submitted no earlier than January 1 and no later than April 1 of the calendar year following the calendar year for which the refund is claimed. The application shall be accompanied by proof of payment of state sales and use taxes paid by the qualified biotechnology taxpayer in the immediately preceding calendar year. The application shall also include any additional information that the department of revenue may require by rule, which may include, without limitation, a detailed list of all expenditures that support a claim for a refund, the name and addresses of an individual who maintains records of such expenditures, and a statement that the qualified biotechnology taxpayer agrees to furnish records of all such expenditures to the department of revenue upon request. No refund shall be allowed if the qualified biotechnology taxpayer has not complied with this subsection (2).

Source: L. 99: Entire part added, p. 610, § 2, effective May 17. L. 2000: (2) amended, p. 1869, § 99, effective August 2. L. 2009: Entire part amended, (HB 09-1035), ch. 371, p. 2012, § 1, effective August 5.

ANNOTATION

Law reviews. For article, "Colorado's Biotechnology Sales- and Use-Tax Refund: The

Window of Opportunity", see 32 Colo. Law. 73 (February 2003).

39-26-403. Refund of state sales and use tax for clean technology and medical devices - application requirements and procedures - repeal. (1) For the calendar year commencing January 1, 2009, and for each calendar year thereafter, each qualified clean technology or medical device taxpayer shall be allowed to claim a refund of all state sales and use tax paid by the qualified clean technology or medical device taxpayer, pursuant to parts 1 and 2 of this article, on the sale, storage, use, or consumption of tangible personal property to be used in Colorado directly and predominately in research and development of

clean technology or medical devices during that calendar year.

(2) To claim the refund allowed by subsection (1) of this section, a qualified clean technology or medical device taxpayer shall submit a refund application to the department of revenue on a form provided by the department. The application shall be submitted no earlier than January 1 and no later than April 1 of the calendar year following the calendar year for which the refund is claimed. The application shall be accompanied by proof of payment of state sales and use taxes paid by the qualified clean technology or medical device taxpayer in the immediately preceding calendar year. The application shall also include any additional information that the department of revenue may require by rule, which may include, without limitation, a detailed list of all expenditures that support a claim for a refund, the name and addresses of an individual who maintains records of such expenditures, a statement that the qualified clean technology or medical device taxpayer agrees to furnish records of all such expenditures to the department of revenue upon request, and the number of persons who are employed on a full-time basis by the qualified clean technology or medical device taxpayer. The refund shall not be allowed if the qualified clean technology or medical device taxpayer has not complied with this subsection (2).

(3) Notwithstanding the provisions of subsection (1) of this section:

(a) A sales and use tax refund described in subsection (1) of this section shall not exceed fifty thousand dollars for a qualified clean technology or medical device taxpayer in a calendar year.

(b) If the revenue estimate prepared by the staff of the legislative council in December 2009 and each December thereafter indicates that the amount of the total general fund revenues for a particular fiscal year will not be sufficient to increase the total state general fund appropriations by six percent over such appropriations for the previous fiscal year, then the refund authorized in subsection (1) of this section shall not be allowed for the next calendar year following the year in which the estimate is prepared. A qualified clean technology or medical device taxpayer who would have been eligible to claim a refund pursuant to this section in a calendar year in which the refund was not allowed may claim said refund in the next calendar year in which the revenue estimate allows the refund. The department of revenue shall, through its web site, specify on or before January 1, 2010, and on or before each January 1 thereafter, whether the refund authorized in subsection (1) of this section shall be allowed for a given calendar year.

(4) This section is repealed, effective July 1, 2014.

Source: L. 2009: Entire part and (3)(b) amended, (HB 09-1035), ch. 371, pp. 2013, 2014, §§ 1, 2, effective August 5.

PART 5

SALES AND USE TAX REFUND FOR POLLUTION CONTROL EQUIPMENT

39-26-501. Definitions. (Repealed)

Source: L. 2000: Entire part added, p. 1462, § 1, effective August 2. L. 2010: Entire section repealed, (SB 10-212), ch. 412, p. 2032, § 1, effective July 1.

39-26-502. Fiscal years commencing on or after July 1, 1999 - temporary refund of state sales and use tax paid for pollution control equipment to refund state revenues exceeding TABOR limit - application requirements and procedures - legislative declaration. (Repealed)

Source: L. 2000: Entire part added, p. 1464, § 1, effective August 2. L. 2010: Entire section repealed, (SB 10-212), ch. 412, p. 2032, § 1, effective July 1.

PART 6

SALES AND USE TAX REFUND FOR
TANGIBLE PERSONAL PROPERTY
USED FOR RESEARCH AND DEVELOPMENT**39-26-601. Definitions. (Repealed)**

Source: **L. 2001:** Entire part added, p. 1464, § 1, effective August 8. **L. 2004:** (1) amended, p. 1045, § 18, effective July 1. **L. 2007:** (1) amended, p. 1176, § 4, effective May 23. **L. 2010:** Entire section repealed, (SB 10-212), ch. 412, p. 2032, § 1, effective July 1.

39-26-602. Fiscal years commencing on or after July 1, 2002 - temporary refund of state sales and use tax paid for tangible personal property used for research and development to refund state revenues exceeding TABOR limit - application requirements and procedures - legislative declaration. (Repealed)

Source: **L. 2001:** Entire part added, p. 1465, § 1, effective August 8. **L. 2004:** (1), (2), and (3) amended, p. 1045, § 19, effective July 1. **L. 2007:** (1), (2), and (3) amended, p. 1176, § 5, effective May 23. **L. 2010:** Entire section repealed, (SB 10-212), ch. 412, p. 2032, § 1, effective July 1.

PART 7

SALES AND USE TAX EXEMPTIONS

Editor's note: This entire part 7 was added in 2004 and includes the relocation of provisions formerly contained in §§ 39-26-114 and 39-26-203. A comparative table showing the relocations is contained in the back of the index.

39-26-701. Definitions. In addition to the definitions in section 39-26-102, as used in this part 7, unless the context otherwise requires:

(1) "Storage" or "storing" means any keeping or retention of, or exercise of dominion or control over, tangible personal property in this state.

Source: **L. 2004:** Entire part added with relocations, p. 1016, § 2, effective July 1.

39-26-702. Department of revenue - rules. The department of revenue shall adopt rules for the administration and enforcement of this part 7.

Source: **L. 2004:** Entire part added with relocations, p. 1016, § 2, effective July 1.

Editor's note: This section is similar to former § 39-26-114 (1)(c) as it existed prior to 2004.

39-26-703. Disputes and refunds. (1) Should a dispute arise between the purchaser and seller as to whether or not any sale, service, or commodity is exempt from taxation pursuant to this part 7, nevertheless the seller shall collect and the purchaser shall pay the tax, and the seller shall thereupon issue to the purchaser a receipt showing the tax paid.

(2) (a) (Deleted by amendment, L. 2011, (HB 11-1265), ch. 228, p. 978, § 3, effective May 27, 2011.)

(b) The right of any person to a refund under this article shall not be assignable, and, except as provided in paragraph (c) of this subsection (2) and subsection (2.5) of this section, such application for refund shall be made by the same person who purchased the goods and paid the tax thereon as shown in the invoice of the sale.

(c) A refund shall be made or a credit allowed by the executive director of the department of revenue to any person entitled to an exemption where the person establishes: That a tax was paid by another on a purchase made on behalf of such person or that a tax was paid by an independent contractor on or before July 1, 1979, on tangible personal property incorporated into realty for the sole use, benefit, and ownership of any person entitled to an exemption; that a refund has not been granted to the person making the purchase; and that the person entitled to exemption paid or reimbursed the purchaser for such tax. No such refund shall be made or credit allowed in an amount greater than the tax paid less the expense allowance on the purchase retained by the vendor pursuant to section 39-26-105 (1).

(c.5) The executive director of the department of revenue shall make a refund or allow a credit to any person who establishes that he or she has overpaid the tax due pursuant to this article. No such refund shall be made or credit allowed in an amount greater than the tax paid less the expense allowance on the purchase retained by the vendor pursuant to section 39-26-105 (1).

(d) An application for refund under paragraph (c) of this subsection (2) shall be made within three years after the date of purchase and shall be made on forms prescribed and furnished by the executive director of the department of revenue, which form shall contain, in addition to the foregoing information, such pertinent data as the executive director prescribes.

(d.5) Upon receipt of the application and proof of the matters contained therein, the executive director of the department of revenue shall give notice to the applicant by order in writing of the executive director's decision. Aggrieved applicants, within thirty days after such decision is mailed to them, may petition the executive director for a hearing on the claim in the manner provided in section 39-21-103 and may appeal to the district courts in the manner provided in section 39-21-105.

(e) The proceeds of any claim for refund shall first be applied by the department of revenue to any tax deficiencies or liabilities existing against the claimant before allowance of the claim by the department; except that, if such excess payment of tax moneys in any period is discovered as a result of audit by the department and deficiencies are discovered and assessed against the taxpayer as a result of the audit, the excess moneys shall be first applied against any deficiencies outstanding to the date of the assessment but shall not be applied to any future tax liabilities.

(2.5) (a) Within three years after the due date of the return showing the overpayment or one year after the date of overpayment, whichever is later, a vendor shall file any claim for refund with the executive director of the department of revenue. The executive director shall promptly examine such claim and shall make a refund or allow a credit to any vendor who establishes that such vendor overpaid the tax due pursuant to this article.

(b) (I) A vendor may claim a refund on behalf of any purchaser of the vendor if:

(A) The purchaser could timely file a claim for a refund on his or her own behalf; and

(B) The vendor establishes to the satisfaction of the executive director of the department of revenue that the amount claimed, including any interest payable pursuant to section 39-21-110, has been or will actually be paid by the vendor to the purchaser.

(II) Nothing in this paragraph (b) shall prohibit a vendor from taking a credit that the vendor believes to be due on a subsequent period return for an overpayment or for tax collected in error and subsequently refunded to a purchaser; except that such credit shall be subject to audit and shall not bear any interest pursuant to section 39-21-110.

(c) No vendor shall be compelled by any party to file a refund claim pursuant to paragraph (b) of this subsection (2.5). It shall be a complete defense to any claim by a purchaser against a vendor for tax collected in error that the vendor has paid the tax over to the department of revenue. Any action by a purchaser for tax collected by a vendor in error that has been remitted to the department must be made pursuant to subsection (2) of this section and section 39-21-108.

(3) If any person is convicted under the provisions of section 39-21-118, the convictions shall be prima facie evidence that all refunds received by the person during the current year were obtained unlawfully, and the executive director of the department of revenue is empowered to bring appropriate action for recovery of such refunds. A brief summary

statement of the above mentioned penalties shall be printed on each form application for refund.

(4) The burden of proving that sales, services, and commodities on which tax refunds are claimed are exempt from taxation under this part 7, or were not at retail, shall be on the one making such claim under such reasonable requirements of proof as the executive director of the department of revenue prescribes. Should the applicant for refund be aggrieved at the final decision of the executive director, the applicant may proceed to have the same reviewed by the district courts in the manner provided for review of other decisions of the executive director as provided in section 39-21-105.

Source: **L. 2004:** Entire part added with relocations, p. 1016, § 2, effective July 1. **L. 2011:** (1), (2), and (3) amended and (2.5) added, (HB 11-1265), ch. 228, p. 978, § 3, effective May 27.

Editor's note: (1) The provisions of this section are similar to several former provisions of § 39-26-114 as they existed prior to 2004. For a detailed comparison, see the comparative tables located in the back of the index.

(2) Section 5 of chapter 228, Session Laws of Colorado 2011, provides that the act amending subsections (1), (2), and (3) and adding subsection (2.5) applies to all claims for refunds of sales or use tax filed with the department of revenue before, on, or after May 27, 2011.

Cross references: For the legislative declaration in the 2011 act amending subsections (1), (2), and (3) and adding subsection (2.5), see section 1 of chapter 228, Session Laws of Colorado 2011.

ANNOTATION

Annotator's note. Since § 39-26-703 is similar to § 39-26-114 and § 39-26-203 as they existed prior to their 2004 repeal and relocation to this part 7, relevant cases construing those provisions have been included in the annotations to this section.

Taxation is the rule and exemption therefrom is the exception. Sec. Life & Accident Co. v. Heckers, 177 Colo. 455, 495 P.2d 225 (1972); Colo. Dept. of Rev. v. Woodmen of the World, 919 P.2d 806 (Colo. 1996); Dept. of Rev. v. Durango & Silverton Narrow Gauge R.R. Co., 989 P.2d 208 (Colo. App. 1999); Colo. Dept. of Rev. v. City of Aurora, 32 P.3d 590 (Colo. App. 2001); Ball Corp. v. Fisher, 51 P.3d 1053 (Colo. App. 2001).

There is a strong presumption that taxation is the rule and exemption the rare exception. S.W. Catholic Credit Union v. Charnes, 665 P.2d 626 (Colo. App. 1982).

The burden is on the taxpayer who claims an exemption to clearly establish the right to such an exemption. Sec. Life & Accident Co. v. Heckers, 177 Colo. 455, 495 P.2d 225 (1972);

Dept. of Rev. v. Durango & Silverton Narrow Gauge R.R. Co., 989 P.2d 208 (Colo. App. 1999).

Use tax is not a separate tax from the sales tax and should not be viewed in isolation. Matthews v. State Dept. of Rev., 193 Colo. 44, 562 P.2d 415 (1977).

Use tax is supplementary to the sales tax. Matthews v. State Dept. of Rev., 193 Colo. 44, 562 P.2d 415 (1977).

State did not err in declining to impose a constructive trust upon use taxes erroneously paid to the state by taxpayers of the city and in failing to grant the city restitution for money had and received. The city is prohibited by its own legislation from seeking to recover the funds. The city's ordinance is a statute of repose that precludes the city from commencing any action, including equitable as well as legal actions, to recover use taxes after a three-year period. City of Colo. Springs v. Tipton, 910 P.2d 75 (Colo. App. 1995).

Applied in First Lutheran Mission v. Dept. of Rev., 44 Colo. App. 417, 613 P.2d 351 (1980).

39-26-704. Miscellaneous sales tax exemptions - governmental entities - hotel residents - schools - exchange of property. (1) All sales to the United States government and to the state of Colorado, its departments and institutions, and the political subdivisions thereof in their governmental capacities only shall be exempt from taxation under the provisions of part 1 of this article.

(2) There shall be exempt from taxation under the provisions of part 1 of this article all sales that the state of Colorado is prohibited from taxing under the constitution or laws of the United States or the state of Colorado and all retail sales within a distance of twenty miles within the boundaries of this state to persons resident, excluding corporations, of

adjoining states, which adjoining states do not impose or levy a retail sales tax on such sales, if the residents of the adjoining states are in this state for the express purpose of making purchases and not as tourists.

(3) There shall be exempt from taxation under the provisions of part 1 of this article all sales and purchases of commodities and services under the provisions of section 39-26-102 (11) to any occupant who is a permanent resident of any hotel, apartment hotel, lodging house, motor hotel, guesthouse, guest ranch, trailer coach, mobile home, auto camp, or trailer court or park and who enters into or has entered into a written agreement for occupancy of a room or accommodations for a period of at least thirty consecutive days during the calendar year or preceding year.

(4) All sales made to schools, other than schools held or conducted for private or corporate profit, shall be exempt from taxation under the provisions of part 1 of this article.

(5) There shall be exempt from taxation under the provisions of part 1 of this article all transactions specified in section 39-26-104 (1) (b) (I) in which the fair market value of the exchanged property is excluded from the consideration or purchase price because the exchanged property is covered by section 39-26-104 (1) (b) (I) (A) or (1) (b) (I) (B), and in which, because there is no additional consideration involved in the transaction, there is no purchase price within the meaning of section 39-26-102 (7).

Source: L. 2004: Entire part added with relocations, p. 1018, § 2, effective July 1.

Editor's note: The provisions of this section are similar to several former provisions of § 39-26-114 as they existed prior to 2004. For a detailed comparison, see the comparative tables located in the back of the index.

ANNOTATION

Annotator's note. Since § 39-26-704 is similar to § 39-26-114 and § 39-26-203 as they existed prior to their 2004 repeal and relocation to this part 7, relevant cases construing those provisions have been included in the annotations to this section.

Law reviews. For article, "Home Rule Use-Tax Credits and Interstate Multi-Jurisdictional Transactions", see 30 Colo. Law. 79 (May 2001).

Sales to governmental agencies exempt only when used in governmental capacity. Sales to the United States government and to the state of Colorado, its departments, institutions, and political subdivisions thereof, are exempt under the provisions of the sales and use tax only where they are to be used by them in their "governmental capacities". *Sec. Life & Accident Co. v. Heckers*, 177 Colo. 455, 495 P.2d 225 (1972).

Governmental exemption not applicable to independent contractor. This section does not embrace a contractor which is neither a branch, agency, or alter ego of the United States government, but merely an independent contractor under contract with the United States government. *Temple v. Arthur Venneri Co.*, 172 Colo. 105, 470 P.2d 576 (1970).

Reimbursement of taxes to contractor cannot exempt sale. The mere fact that a municipi-

ality reimburses a private contractor for taxes does not establish that a sale of goods was made to the municipality and is thus exempt from taxes under subsection (1)(a). *Weed v. City of Pueblo*, 197 Colo. 52, 591 P.2d 80 (1979).

Insurance companies do not fall within the classifications of the entities exempted under the sales and use tax. *Sec. Life & Accident Co. v. Heckers*, 177 Colo. 455, 495 P.2d 225 (1972).

No exemption for state chartered credit unions. No exemption as to payment of sales taxes is provided to state chartered credit unions. *S.W. Catholic Credit Union v. Charnes*, 665 P.2d 626 (Colo. App. 1982).

Railroad is exempt from the sales tax imposed by this section with respect to sales of food and beverages sold by the railroad to passengers on its line pursuant to subparagraph (1)(A)(III) of this section and § 40-20-109. *Dept. of Rev. v. Durango & Silverton Narrow Gauge R.R. Co.*, 989 P.2d 208 (Colo. App. 1999).

City should have imposed sales tax on golf cart rentals because city acted in a proprietary capacity in renting golf carts. Since sales tax had not been collected, requiring city to pay use tax in lieu of sales tax was appropriate. *Colo. Dept. of Rev. v. City of Aurora*, 32 P.3d 590 (Colo. App. 2001).

39-26-705. Miscellaneous use tax exemptions - printers ink and newsprint - manufactured goods. (1) The storage, use, or consumption of printers ink and newsprint shall be exempt from taxation under the provisions of part 2 of this article.

(2) There shall be exempt from taxation under the provisions of part 2 of this article the storage, use, or consumption of manufactured goods, including, but not limited to, high technology goods, donated by the manufacturer of such goods to the United States government; the state of Colorado or any department, institution, or political subdivision thereof; or any organization exempt from federal income taxes pursuant to section 501 (c) (3) of the "Internal Revenue Code of 1986", as amended, to the extent that the aggregate value of all such goods included in a single donation exceeds one thousand dollars.

Source: L. 2004: Entire part added with relocations, p. 1019, § 2, effective July 1.

Editor's note: Subsection (1) is similar to former § 39-26-203 (1)(i), and subsection (2) is similar to former § 39-26-203 (1)(ff), as they existed prior to 2004.

39-26-706. Miscellaneous sales and use tax exemptions - cigarettes - internet access - refractory materials - precious metal bullion and coins. (1) (a) All sales of cigarettes shall be exempt from taxation under the provisions of part 1 of this article; except that any sales of cigarettes after June 30, 2009, and before July 1, 2013, shall not be exempt from such taxation.

(b) The storage, use, or consumption of cigarettes shall be exempt from taxation under the provisions of part 2 of this article; except that the storage, use, or consumption of cigarettes after June 30, 2009, and before July 1, 2013, shall not be exempt from such taxation.

(c) Notwithstanding any provision of law to the contrary, for any local government or political subdivision of the state that levies a sales or use tax based on the sales or use tax levied by the state pursuant to this article, the sale or storage, use, or consumption of cigarettes after June 30, 2009, and before July 1, 2013, shall be exempt from the sales or use tax of such local government or political subdivision.

(2) (a) On and after May 1, 1998, internet access services, as defined in section 24-79-102 (2) (b), C.R.S., shall be exempt from taxation under the provisions of part 1 of this article.

(b) From May 1, 1998, internet access services, as defined in section 24-79-102 (2) (b), C.R.S., shall be exempt from taxation under the provisions of part 2 of this article.

(3) All sales and purchases of and the storage, use, or consumption of refractory materials and carbon electrodes used by a person manufacturing iron and steel for sale or profit and all sales and purchases of and the storage, use, or consumption of inorganic chemicals used in the processing of vanadium-uranium ores shall be exempt from taxation under parts 1 and 2 of this article.

(4) (a) All sales of precious metal bullion and coins, as defined in section 39-26-102 (2.6) and (6.5), shall be exempt from taxation under the provisions of part 1 of this article.

(b) The storage, use, or consumption of precious metal bullion and coins, as defined in section 39-26-102 (2.6) and (6.5), shall be exempt from taxation under the provisions of part 2 of this article.

(5) On and after July 1, 2010, the collection of the waste tire fee pursuant to section 25-17-202, C.R.S., is exempt from taxation under part 1 of this article.

Source: L. 2004: Entire part added with relocations, p. 1019, § 2, effective July 1. **L. 2009:** (1) amended, (HB 09-1342), ch. 354, p. 1846, § 1, effective July 1. **L. 2010:** (5) added, (HB 10-1018), ch. 421, p. 2181, § 14, effective June 10. **L. 2011:** (1) amended, (HB 11-1296), ch. 181, p. 691, § 1, effective May 19.

Editor's note: The provisions of this section are similar to several former provisions of §§ 39-26-114 and 39-26-203 as they existed prior to 2004. For a detailed comparison, see the comparative tables located in the back of the index.

39-26-707. Food, meals, and beverages - definitions. (1) The following shall be exempt from taxation under the provisions of part 1 of this article:

(a) All sales of food purchased with food stamps. For the purposes of this paragraph (a), "food" shall have the same meaning as provided in 7 U.S.C. sec. 2012 (g), as such section exists on October 1, 1987, or is thereafter amended.

(b) All sales of food purchased with funds provided by the special supplemental food program for women, infants, and children, as provided for in 42 U.S.C. sec. 1786. For the purposes of this paragraph (b), "food" shall have the same meaning as provided in 42 U.S.C. sec. 1786, as such section exists on October 1, 1987, or is thereafter amended.

(c) Any sale of any article to a retailer or vendor of food, meals, or beverages, which article is to be furnished to a consumer or user for use with articles of tangible personal property purchased at retail, if a separate charge is not made for the article to the consumer or user, if such article becomes the property of the consumer or user, together with the food, meals, or beverages purchased, and if a tax is paid on the retail sale as required by section 39-26-104 (1) (a) or (1) (e); except that, on or after March 1, 2010, any such article that is nonessential to the consumer or user, as determined by rules of the department of revenue promulgated in accordance with article 4 of title 24, C.R.S., shall be subject to state sales taxation;

(d) Any sale of any container or bag to a retailer or vendor of food, meals, or beverages, which container or bag is to be furnished to a consumer or user for the purpose of packaging or bagging articles of tangible personal property purchased at retail, if a separate charge is not made for the container or bag to the consumer or user, if such container or bag becomes the property of the consumer or user, together with the food, meals, or beverages purchased, and if a tax is paid on the retail sale as required by section 39-26-104 (1) (a) or (1) (e); except that, on and after March 1, 2010, any such container or bag that is nonessential to the consumer or user, as determined by rules of the department of revenue promulgated in accordance with article 4 of title 24, C.R.S., shall be subject to state sales taxation; and

(e) Commencing January 1, 1980, all sales of food.

(1.5) (a) Notwithstanding the provisions of paragraph (e) of subsection (1) of this section, on and after May 1, 2010, sales of candy and soft drinks shall be subject to state sales taxation.

(b) For the purposes of this subsection (1.5):

(I) "Candy" means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruit, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces. "Candy" shall not include any preparation containing flour and shall require no refrigeration.

(II) "Soft drinks" means nonalcoholic beverages that contain natural or artificial sweeteners. "Soft drinks" do not include beverages that contain milk or milk products, soy, rice, or similar milk substitutes, or greater than fifty percent of vegetable or fruit juice by volume.

(2) The following shall be exempt from taxation under the provisions of part 2 of this article:

(a) Effective January 1, 1980, the storage, use, or consumption of food or meals that are provided to employees of the places described in section 39-26-104 (1) (e), if such are provided to such employees at no charge or at a reduced charge;

(b) The storage, use, or consumption of any article by a retailer or vendor of food, meals, or beverages, which article is to be furnished to a consumer or user for use with articles of tangible personal property purchased at retail, if a separate charge is not made for the article to the consumer or user, if the article becomes the property of the consumer or user, together with the food, meals, or beverages purchased, and if a tax is paid on the retail sale as required by section 39-26-104 (1) (a) or (1) (e); except that, on and after March 1, 2010, any such article stored, used, or consumed that is nonessential to the end consumer or user, as determined by rules of the department of revenue promulgated in accordance with article 4 of title 24, C.R.S., shall be subject to state use taxation;

(c) The storage, use, or consumption of any container or bag by a retailer or vendor of food, meals, or beverages, which container or bag is to be furnished to a consumer or user for the purpose of packaging or bagging articles of tangible personal property purchased at

retail, if a separate charge is not made for the container or bag to the consumer or user, if the container or bag becomes the property of the consumer or user, together with the food, meals, or beverages purchased, and if a tax is paid on the retail sale as required by section 39-26-104 (1) (a) or (1) (e); except that, on and after March 1, 2010, any such container or bag stored, used, or consumed that is nonessential to the end consumer or user, as determined by rules of the department of revenue promulgated in accordance with article 4 of title 24, C.R.S., shall be subject to state use taxation; and

(d) (I) Effective January 1, 1980, the storage, use, or consumption of food as defined in section 39-26-102 (4.5); except that, on and after May 1, 2010, the storage, use, or consumption of candy and soft drinks shall be subject to state use taxation.

(II) For the purposes of this paragraph (d):

(A) “Candy” means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruit, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces. “Candy” shall not include any preparation containing flour and shall require no refrigeration.

(B) “Soft drinks” means nonalcoholic beverages that contain natural or artificial sweeteners. “Soft drinks” do not include beverages that contain milk or milk products, soy, rice, or similar milk substitutes, or greater than fifty percent of vegetable or fruit juice by volume.

(3) The department of revenue may promulgate rules, in accordance with article 4 of title 24, C.R.S., to provide a means by which a person who sells candy or soft drinks at retail may, if necessary, reasonably estimate the amount of sales taxes due on such candy and soft drinks. For any return made prior to August 1, 2010, a person who sells candy or soft drinks at retail shall not be liable for any interest or other penalty imposed as a result of an error made in connection with the elimination of the exemption from state sales tax for sales of candy and soft drinks, as defined in paragraph (b) of subsection (1.5) of this section, by House Bill 10-1191, enacted in 2010.

(4) For any return made prior to June 1, 2010, a person who sells or stores, uses, or consumes items described in paragraphs (c) and (d) of subsection (1) and paragraphs (b) and (c) of subsection (2) of this section that are nonessential to the end consumer or user shall not be liable for any interest or other penalty imposed as a result of an error made in connection with the elimination of the exemption for such nonessential items from state sales and use tax by House Bill 10-1194, enacted in 2010.

Source: **L. 2004:** Entire part added with relocations, p. 1020, § 2, effective July 1. **L. 2009:** (2)(a) amended, (SB 09-121), ch. 421, p. 2338, § 2, effective June 4. **L. 2010:** (1)(c), (1)(d), (2)(b), and (2)(c) amended and (4) added, (HB 10-1194), ch. 10, p. 58, § 1, effective February 24; (1.5) and (3) added and (2)(d) amended, (HB 10-1191), ch. 7, p. 45, §§ 1, 2, effective February 24; (2)(a) amended, (HB 10-1422), ch. 419, p. 2121, § 175, effective August 11.

Editor’s note: (1) The provisions of this section are similar to several former provisions of §§ 39-26-114 and 39-26-203 as they existed prior to 2004. For a detailed comparison, see the comparative tables located in the back of the index.

(2) Subsection (4) was originally enacted as subsection (3) in House Bill 10-1194 but has been renumbered on revision for ease of location.

ANNOTATION

Annotator’s note. Since § 39-26-707 is similar to § 39-26-203 as it existed prior to its 2004 repeal and relocation to this part 7, relevant cases construing that provision have been included in the annotations to this section.

“Container” exemption construed. Glass bottles purchased from bottle manufacturer are exempt, whether or not the bottle is returnable. *Weed v. Occhiato*, 175 Colo. 509, 488 P.2d 877 (1971).

A beer keg is exempt as a "container" regardless of the fact that it is continuously reused by brewer and never sold or given away. *Adolph Coors Co. v. Charnes*, 690 P.2d 893 (Colo. App. 1984), *aff'd*, 724 P.2d 1341 (Colo. 1986).

Bar snacks not exempt. Snacks provided by a hotel in connection with its bar services are not

exempt because they are not furnished for "use with" food. This exemption applies to certain wooden, paper, and plastic products which are used to serve food and beverages. *Broadmoor Hotel v. Dept. of Rev.*, 773 P.2d 627 (Colo. App. 1989).

39-26-708. Construction and building materials. (1) There shall be exempt from taxation under the provisions of part 1 of this article all sales of construction and building materials to contractors and subcontractors for use in the building, erection, alteration, or repair of structures, highways, roads, streets, and other public works owned and used by:

(a) The United States government, the state of Colorado, its departments and institutions, and the political subdivisions thereof in their governmental capacities only;

(b) Charitable organizations in the conduct of their regular charitable functions and activities; or

(c) Schools, other than schools held or conducted for private or corporate profit.

(2) There shall be exempt from taxation under the provisions of part 2 of this article the storage, use, or consumption by a contractor or subcontractor of construction and building materials for use in the building, erection, alteration, or repair of structures, highways, roads, streets, and other public works owned and used by:

(a) The United States government, the state of Colorado, its departments and institutions, and the political subdivisions thereof in their governmental capacities only;

(b) Charitable organizations in the conduct of their regular charitable functions and activities; or

(c) Schools, other than schools held or conducted for private or corporate profit.

(3) On application by a purchaser or seller, the department of revenue shall issue to a contractor or subcontractor a certificate of exemption indicating that the contractor's or subcontractor's purchase of construction or building materials is for a purpose stated in subsection (1) of this section and is, therefore, free from sales tax. The department shall provide forms for the application and certificate and shall have the authority to verify that the contractor or subcontractor is, in fact, entitled to the issuance of the certificate prior to such issuance.

Source: L. 2004: Entire part added with relocations, p. 1021, § 2, effective July 1.

Editor's note: The provisions of this section are similar to several former provisions of §§ 39-26-114 and 39-26-203 as they existed prior to 2004. For a detailed comparison, see the comparative tables located in the back of the index.

39-26-709. Machinery and machine tools. (1) (a) The following shall be exempt from taxation under the provisions of part 1 of this article:

(I) (Deleted by amendment, L. 2004, p. 1022, § 2, effective July 1, 2004.)

(II) Except as allowed in section 39-30-106, on or after July 1, 1996, purchases of machinery or machine tools, or parts thereof, in excess of five hundred dollars to be used in Colorado directly and predominantly in manufacturing tangible personal property, for sale or profit; and

(III) (Deleted by amendment, L. 2008, p. 1323, § 8, effective May 27, 2008.)

(IV) Purchases of machinery and machine tools, or parts thereof, used in the production of electricity in a facility for which a long-term power purchase agreement was fully executed between February 5, 2001, and November 7, 2006, whether or not such purchases are capitalized or expensed.

(b) A parent corporation and all closely held subsidiary corporations, as defined in section 39-26-102 (10) (k), shall be considered one person for the purposes of this section and, as a group, shall be subject to the provisions of paragraph (a) of this subsection (1).

(c) As used in this subsection (1):

(I) “Long-term power purchase agreement” means an agreement executed between one or more independent power producers and a provider of retail electric service for a term of no less than ten years, pursuant to which the independent power producer or producers agree to sell all of the production offered for sale from a particular power generation facility for a specified price over a specified term.

(II) “Machinery” means any apparatus consisting of interrelated parts used to produce an article of tangible personal property. The term includes both the basic unit and any adjunct or attachment necessary for the basic unit to accomplish its intended function.

(III) “Manufacturing” means the operation of producing a new product, article, substance, or commodity different from and having a distinctive name, character, or use from raw or prepared materials.

(IV) “Specified price” means a price set by a long-term power purchase agreement that is not dependent on either the cost of production or the market price of electricity; except that a specified price may provide for a percentage increase over time so long as the percentage increase is specified in the original long-term power purchase agreement and is also not dependent on either the cost of production or the market price of electricity.

(d) For purposes of this subsection (1), direct use in manufacturing is deemed to begin for items normally manufactured from inventoried raw material at the point at which raw material is moved from plant inventory on a contiguous plant site and to end at a point at which manufacturing has altered the raw material to its completed form, including packaging, if required. Machinery used during the manufacturing process to move material from one direct production step to another in a continuous flow and machinery used in testing during the manufacturing process is deemed to be directly used in manufacturing.

(e) In order to qualify for the exemption provided in this subsection (1), a purchase shall be of such nature that it would have qualified for the investment tax credit against federal income tax as was provided by section 38 of the federal “Internal Revenue Code of 1954”, as amended.

(f) An exemption may not be claimed under this section for sales tax paid in another state that is credited against Colorado sales tax or use tax or both.

(g) To receive an exemption under this subsection (1), a declaration of entitlement shall be filed by the purchaser with the vendor of the machinery or machine tools, or parts thereof, and with the executive director of the department of revenue.

(2) Effective July 1, 1979, the storage, use, or consumption of machinery or machine tools, or parts thereof, exempt from sales tax by subsection (1) of this section shall be exempt from taxation under the provisions of part 2 of this article.

Source: **L. 2004:** Entire part added with relocations, p. 1022, § 2, effective July 1. **L. 2007:** (1)(a)(III) and (1)(a)(IV) added and (1)(c) amended, p. 1175, §§ 2, 3, effective May 23. **L. 2008:** (1)(a) amended, p. 1323, § 8, effective May 27. **L. 2010:** (1)(c)(III) amended, (HB 10-1192), ch. 8, p. 52, § 4, effective March 1. **L. 2011:** (1)(c)(III) amended, (HB 11-1293), ch. 299, p. 1440, § 5, effective July 1, 2012.

Editor’s note: Subsection (1) is similar to former § 39-26-114 (11), and subsection (2) is similar to former § 39-26-203 (1)(y), as they existed prior to 2004.

Cross references: (1) For the legislative declaration contained in the 2007 act enacting subsections (1)(a)(III) and (1)(a)(IV) and amending subsection (1)(c), see section 1 of chapter 281, Session Laws of Colorado 2007.

(2) For the legislative intent contained in the 2008 act amending subsection (1)(a), see section 9 of chapter 302, Session Laws of Colorado 2008.

ANNOTATION

Annotator’s note. Since § 39-26-709 is similar to § 39-26-114 and § 39-26-203 as they existed prior to their 2004 repeal and relocation to this part 7, relevant cases construing those

provisions have been included in the annotations to this section.

Law reviews. For article, “Colorado’s Machinery Exemption”, see 25 Colo. Law. 65 (Jan-

uary 1996). For article, "Colorado Machinery Exemption: An Update", see 25 Colo. Law. 113 (October 1996).

By including the phrase "as amended" in subsection (1)(d), the general assembly indicated that that paragraph was intended to track the referenced federal provision as it evolved. *Ball Corp. v. Fisher*, 51 P.3d 1053 (Colo. App. 2001).

Components of beer manufacturer's load-out facility and the brewing adjunct used by

the manufacturer were exempt from use tax pursuant to subsections (1)(y) and (1)(f), respectively. *Coors Brewing Co. v. Fagan*, 949 P.2d 110 (Colo. App. 1997).

Separators used in oil and gas production are not exempt. *Noble Energy v. Colo. Dept. of Rev.*, 232 P.3d 293 (Colo. App. 2010).

Machinery and machine tools used in the generation and transmission of electricity are exempt from taxation. *Pub. Serv. Co. v. Dept. of Rev.*, ___ P.3d ___ (Colo. App. 2011).

39-26-710. Railroads - construction and building materials - tangible personal property - work equipment - rolling stock. (1) The following shall be exempt from taxation under the provisions of part 1 of this article:

(a) The sale of construction and building materials to a common carrier by rail operating in interstate or foreign commerce for use by the common carrier in construction and maintenance of its railroad tracks; however, any actual use of such construction and building materials shall, at the time of the actual use, be subject to the tax imposed by part 2 of this article and any use tax imposed pursuant to article 2 of title 29, C.R.S.;

(b) The sale of tangible personal property that is to be affixed or attached as a component part of a locomotive, a freight car, railroad work equipment, or other railroad rolling stock; and

(c) The sale of locomotives, freight cars, railroad work equipment, and other railroad rolling stock used or purchased for use in interstate commerce by a railroad company.

(2) The following shall be exempt from taxation under the provisions of part 2 of this article:

(a) The storage, use, or consumption of any tangible personal property that is to be affixed or attached as a component part of a locomotive, a freight car, railroad work equipment, or other railroad rolling stock; and

(b) The storage, use, or consumption of locomotives, freight cars, railroad work equipment, and other railroad rolling stock used or purchased for use in interstate commerce by a railroad company.

Source: L. 2004: Entire part added with relocations, p. 1023, § 2, effective July 1.

Editor's note: The provisions of this section are similar to several former provisions of §§ 39-26-114 and 39-26-203 as they existed prior to 2004. For a detailed comparison, see the comparative tables located in the back of the index.

39-26-711. Aircraft - tangible personal property. (1) The following shall be exempt from taxation under the provisions of part 1 of this article:

(a) Effective July 1, 1984, the sale of aircraft used or purchased for use in interstate commerce by a commercial airline; and

(b) The sale of tangible personal property that is to be permanently affixed or attached as a component part of an aircraft.

(2) The following shall be exempt from taxation under the provisions of part 2 of this article:

(a) Effective July 1, 1984, the storage, use, or consumption of aircraft used or purchased for use in interstate commerce by a commercial airline; and

(b) The storage, use, or consumption of any tangible personal property that is to be permanently affixed or attached as a component part of an aircraft.

Source: L. 2004: Entire part added with relocations, p. 1024, § 2, effective July 1.

Editor's note: The provisions of this section are similar to several former provisions of §§ 39-26-114 and 39-26-203 as they existed prior to 2004. For a detailed comparison, see the comparative tables located in the back of the index.

39-26-711.5. Aircraft - use outside state. (1) The sale of a new or used aircraft shall be exempt from taxation under the provisions of part 1 of this article if:

- (a) The aircraft is sold to a person who is not a resident of the state;
 - (b) The aircraft will be removed from the state within one hundred twenty days after the date of the sale; and
 - (c) The aircraft will not be in the state more than seventy-three days in any of the three calendar years following the calendar year in which the aircraft is removed from the state pursuant to paragraph (b) of this subsection (1).
- (2) A purchaser of an aircraft who claims the exemption allowed by this section shall, at the time of purchase, provide to the seller an affidavit that the purchaser is not a resident of the state and that the purchaser agrees to pay the tax imposed by part 1 of this article if the purchaser fails to comply with the requirements of paragraphs (b) and (c) of subsection (1) of this section.
- (3) An aircraft that is hangared or parked overnight shall be considered to be in the state for purposes of this section.

Source: L. 2008: Entire section added, p. 951, § 1, effective August 5.

39-26-712. Trailers and trucks. (1) The following shall be exempt from taxation under the provisions of part 1 of this article:

- (a) The sale of a new or used trailer, semitrailer, truck, truck tractor, or truck body manufactured within this state if such vehicle is purchased from the manufacturer for use exclusively outside this state or in interstate commerce and is delivered by the manufacturer to the purchaser within this state, if the purchaser drives or moves such vehicle to any point outside this state within thirty days after the date of delivery, and if the purchaser furnishes an affidavit to the manufacturer that such vehicle will be permanently licensed and registered outside this state and will be removed from this state within thirty days after the date of delivery; and
- (b) The sale of a new or used trailer, semitrailer, truck, truck tractor, or truck body if such vehicle is purchased for use exclusively outside this state or in interstate commerce and is delivered by the manufacturer or licensed Colorado dealer to the purchaser within this state, if the purchaser drives or moves such vehicle to any point outside this state within thirty days after the date of delivery, and if the purchaser furnishes an affidavit to the seller that such vehicle will be permanently licensed and registered outside this state and will be removed from this state within thirty days after the date of delivery.

(2) The following shall be exempt from taxation under the provisions of part 2 of this article:

- (a) The storage or use of a new or used trailer, semitrailer, truck, truck tractor, or truck body manufactured within this state if such vehicle is purchased from the manufacturer for use exclusively outside this state or in interstate commerce and is delivered by the manufacturer to the purchaser within this state, if the purchaser drives or moves such vehicle to any point outside this state within thirty days after the date of delivery, and if the purchaser furnishes an affidavit to the manufacturer that such vehicle will be permanently licensed and registered outside this state and will be removed from this state within thirty days after the date of delivery;
- (b) The storage or use of a new or used trailer, semitrailer, truck, truck tractor, or truck body if such vehicle is purchased for use exclusively outside this state or in interstate commerce and is delivered by the manufacturer or licensed Colorado dealer to the purchaser within this state, if the purchaser drives or moves such vehicle to any point outside this state within thirty days after the date of delivery, and if the purchaser furnishes an affidavit to the seller that such vehicle will be permanently licensed and registered outside this state and will be removed from this state within thirty days after the date of delivery; and
- (c) The storage or use of a new or used trailer, semitrailer, truck, truck tractor, or truck body if the vehicle has been relocated within this state, was used in interstate commerce, and the owner can provide evidence of the vehicle being previously registered in another state for at least six months.

Source: L. 2004: Entire part added with relocations, p. 1024, § 2, effective July 1.
L. 2010: (2)(c) added, (HB 10-1285), ch. 423, p. 2191, § 5, effective July 1.

Editor's note: The provisions of this section are similar to several former provisions of §§ 39-26-114 and 39-26-203 as they existed prior to 2004. For a detailed comparison, see the comparative tables located in the back of the index.

39-26-713. Tangible personal property. (1) The following shall be exempt from taxation under the provisions of part 1 of this article:

(a) Any right to the continuous possession or use for three years or less of any article of tangible personal property under a lease or contract, if the lessor has paid to the state of Colorado a sales or use tax on such tangible personal property upon its acquisition. The department of revenue may permit a lessor of tangible personal property leased for a period of three years or less to acquire the property free of sales or use tax if the lessor agrees to collect sales tax on all lease payments received on the property.

(b) The transfer of tangible personal property without consideration, other than the purchase, sale, or promotion of the transferor's product, to an out-of-state vendee for use outside of this state in selling products normally sold at wholesale by the transferor;

(c) The sale of tangible personal property for testing, modification, inspection, or similar type of activities in this state if the ultimate use of the property in manufacturing or similar type of activities occurs outside of this state and if the test, modification, or inspection period does not exceed ninety days; and

(d) All sales and purchases of tangible personal property by a manufacturer that uses the property as a component part of goods that it manufactures, including, but not limited to, high technology goods, and that donates such goods to the United States government; the state of Colorado or any department, institution, or political subdivision thereof; or any organization exempt from federal income taxes pursuant to section 501 (c) (3) of the "Internal Revenue Code of 1986", as amended, to the extent that the aggregate value of the goods included in a single donation exceeds one thousand dollars.

(2) The following shall be exempt from taxation under the provisions of part 2 of this article:

(a) The storage, use, or consumption of any tangible personal property the sale of which is subject to the retail sales tax imposed by part 1 of this article, including transactions that are exempt from taxation under section 39-26-704 (5);

(b) (I) The storage, use, or consumption of any tangible personal property purchased for resale in this state, either in its original form or as an ingredient of a manufactured or compounded product, in the regular course of a business.

(II) For purposes of this paragraph (b), any motor vehicle purchased and held for resale in this state by a licensed motor vehicle dealer, as defined in section 12-6-102 (13), C.R.S., who meets the eligibility requirements to receive a full-use dealer plate set forth in section 42-3-116 (6) (a) (I), C.R.S., shall be considered to be in the regular course of business and shall not be subject to taxation under part 2 of this article. A motor vehicle shall be considered to be purchased and held for resale if:

(A) The manufacturer's certificate of origin or certificate of title for the motor vehicle is assigned to the motor vehicle dealer;

(B) The motor vehicle is included in a current list of vehicles for retail sale that is prepared by the motor vehicle dealer in the ordinary course of business; and

(C) At any given time, the motor vehicle is available to be purchased and delivered to a retail customer within three business days.

(c) The storage, use, or consumption of tangible personal property brought into this state by a nonresident for his or her own storage, use, or consumption while temporarily within this state;

(d) The storage, use, consumption, or loan of tangible personal property by or to the United States government, the state of Colorado or its institutions or political subdivisions in their governmental capacities only, or any charitable organization in the conduct of its regular charitable functions and activities; except that any veterans' organization that qualifies as a charitable organization pursuant to section 39-26-102 (2.5) shall be exempt

from taxation under the provisions of part 2 of this article only for the purpose of sponsoring a special event, meeting, or other function in the state of Colorado that is not part of such organization's regular activities in the state;

(e) (I) The storage, use, or consumption of tangible personal property by a person engaged in the business of manufacturing or compounding for sale, profit, or use any article, substance, or commodity, which tangible personal property enters into the processing of or becomes an ingredient or component part of the product or service that is manufactured, compounded, or furnished, and the container, label, or the furnished shipping case.

(II) As used in subparagraph (I) of this paragraph (e) with regard to food products, tangible personal property enters into the processing of such products and is therefore exempt from taxation when:

(A) It is intended that such property become an integral or constituent part of a food product that is intended to be sold ultimately at retail for human consumption; or

(B) Such property, whether or not it becomes an integral or constituent part of a food product, is a chemical, solvent, agent, mold, skin casing, or other material; is used for the purpose of producing or inducing a chemical or physical change in a food product or is used for the purpose of placing a food product in a more marketable condition; and is directly utilized and consumed, dissipated, or destroyed, to the extent it is rendered unfit for further use, in the processing of a food product that is intended to be sold ultimately at retail for human consumption.

(f) The storage, use, or consumption of any article of tangible personal property the sale or use of which has already been subjected to a tax equal to or in excess of that imposed by part 2 of this article. A credit shall be granted against the use tax imposed by part 2 of this article with respect to a person's storage, use, or consumption in this state of tangible personal property purchased by the person in another state. The amount of the credit shall be equal to the tax paid by the person to another state by reason of the imposition of a similar tax on the purchase or use of the property. The amount of the credit shall not exceed the tax imposed by part 2 of this article.

(g) The storage, use, or consumption of tangible personal property and household effects acquired outside of this state and brought into it by a nonresident acquiring residency;

(h) The storage, use, or consumption of tangible personal property purchased by a resident of Colorado while outside the state in amounts of one hundred dollars or less;

(i) The storage, use, or consumption of tangible personal property that is thereafter transferred to an out-of-state vendee without consideration, other than the purchase, sale, or promotion of the transferor's product, for use outside of this state in selling products normally sold at wholesale by the corporation or person storing, using, or consuming said property; and

(j) The testing, modification, inspection, or similar type activities of tangible personal property acquired for ultimate use outside of this state in manufacturing or similar type of activities if the test, modification, or inspection period does not exceed ninety days.

Source: L. 2004: Entire part added with relocations, p. 1025, § 2, effective July 1.
L. 2006: IP(2)(b)(II) amended, p. 1508, § 59, effective June 1.

Editor's note: (1) The provisions of this section are similar to several former provisions of §§ 39-26-114 and 39-26-203 as they existed prior to 2004. For a detailed comparison, see the comparative tables located in the back of the index.

(2) House Bill 04-1241 amended § 39-26-203 (1)(b), effective April 26, 2004, but that amendment did not take effect in that section since the entire section was repealed by Senate Bill 04-087, effective July 1, 2004. The amendment to § 39-26-203 (1)(b) by House Bill 04-1241 was harmonized with Senate Bill 04-087 and relocated to subsection (2)(b).

Cross references: For the legislative declaration contained in the 2004 act amending subsection (2)(b), as said amendment was relocated from § 39-26-203 (1)(b) as amended in House Bill 04-1241, see section 1 of chapter 203, Session Laws of Colorado 2004.

ANNOTATION

Annotator's note. Since § 39-26-713 is similar to § 39-26-114 and § 39-26-203 as they existed prior to their 2004 repeal and relocation to this part 7, relevant cases construing those provisions have been included in the annotations to this section.

Denial of trade-in allowance on out-of-state purchases unconstitutional. It is constitutionally impermissible for the Colorado taxing authorities to deny a trade-in allowance in computing the use tax on a motor vehicle purchased outside the state when such a credit is allowed when the vehicle is purchased in Colorado. Such unequal treatment is discriminatory and constitutes an impermissible burden on interstate commerce. *Matthews v. State Dept. of Rev.*, 193 Colo. 44, 562 P.2d 415 (1977).

Use taxes equalize burden between in-state and out-of-state purchasers. Use taxes are enacted primarily to equalize the tax burden as between those who purchase within and without the state. *Matthews v. State Dept. of Rev.*, 193 Colo. 44, 562 P.2d 415 (1977).

Use tax no greater than necessary to compensate for earlier avoided sales tax. Given the supplementary nature and equalizing function of the use tax, the burden on the taxpayer should be no greater than necessary to compensate for the sales tax originally avoided on purchases of materials for manufacturing and resale. A levy upon the "full finished goods cost" or "capitalized cost" of goods withdrawn from a company's inventory inevitably would have the effect of taxing the company's labor and overhead. In effect, it would amount to a value added tax. *Int'l Bus. Mchs. Corp. v. Charnes*, 198 Colo. 374, 601 P.2d 622 (1979).

In considering the meaning of the statutory use tax exemption, the definitions of wholesale and retail sale established by the general assembly differ from the ordinarily accepted general conception of those terms. *Bedford v. Colo. Fuel and Iron Corp.*, 102 Colo. 538, 81 P.2d 752 (1938); *Hirschfeld Press v. Denver*, 806 P.2d 917 (Colo. 1991).

The primary purpose of a purchase, as determined by objective criteria, determines whether the purchase is for resale. *Hirschfeld Press v. Denver*, 806 P.2d 917 (Colo. 1991).

The determination of whether a transaction constitutes a purchase for resale turns on whether the item purchased is acquired primarily for resale in an unaltered condition and basically unused by the purchaser. *Hirschfeld Press v. Denver*, 806 P.2d 917 (Colo. 1991).

Only price of parts, not labor, taxable. Of the contract prices of elevators installed in a building, that part representing the amount expended for labor is exempt from the tax, the balance representing the cost of materials being

taxable. *Fifteenth St. Inv. Co. v. People*, 102 Colo. 571, 81 P.2d 764 (1938).

Section prevents use tax on property for which sales tax paid. This section is intended to prevent the imposition of a "use" tax on tangible personal property in those instances where the consumer has actually paid to a licensed "vendor" the statutory sales tax due on the sale. *J. A. Tobin Constr. Co. v. Weed*, 158 Colo. 430, 407 P.2d 350 (1965).

Phrase "in the regular course of a business" in subsection (1)(b) involves a requirement of commercial continuity of consistency. *Rose v. Executive Dir. of Dept. of Rev.*, 42 Colo. App. 319, 593 P.2d 982 (1979).

The question of whether a purchase of an item of personal property is a purchase for resale as contemplated by subsection (1)(b) requires a determination of whether the item is purchased primarily for resale in an unaltered condition and basically unused by the purchaser. *Reg'l Transp. Dist. v. Martin Marietta Corp*, 805 P.2d 1102 (Colo. 1991).

The use to which the purchaser puts the property will often define the true nature of a particular transaction. The test of whether a purchase of an item of tangible property is a purchase for resale does not emphasize the subjective intent of the purchaser, but rather focuses on the conduct of the purchaser. *Reg'l Transp. Dist. v. Martin Marietta Corp*, 805 P.2d 1102 (Colo. 1991).

Exemption for tangible personal property purchased for resale in the regular course of business was construed in Martin Marietta v. Reg'l Transp. Dist., 772 P.2d 668 (Colo. App. 1989), cert. denied, 785 P.2d 916 (Colo. 1989).

Only property becoming constituent part of finished product entitled to exemption. In order to be exempt under the processing clause of the sales and use tax provisions, tangible personal property purchased by a manufacturer must become a constituent part of the finished product, wholly or partially, by either chemical or mechanical means. *CF & I Steel Corp. v. Charnes*, 637 P.2d 324 (Colo. 1981).

City should have imposed sales tax on golf cart rentals because city acted in a proprietary capacity in renting golf carts. Since sales tax had not been collected, requiring city to pay use tax in lieu of sales tax was appropriate. *Colo. Dept. of Rev. v. City of Aurora*, 32 P.3d 590 (Colo. App. 2001).

City liable for use tax on golf cart rentals. City acted in a proprietary capacity in renting golf carts and was therefore liable to the state under § 39-26-105 for sales tax that it failed to collect from customers renting golf carts. Since sales tax had not been collected, requiring city to pay use tax in lieu of sales tax was appropriate.

Colo. Dept. of Rev. v. City of Aurora, 32 P.3d 590 (Colo. App. 2001).

Purchase of communications apparatus by telephone company. The purchase by a telephone company of instruments, apparatus, cable, wire, etc., does not "enter into the processing of" the service rendered by the company, and therefore is not exempt from the sales and

use tax. Western Elec. Co. v. Weed, 185 Colo. 340, 524 P.2d 1369 (1974).

Components of beer manufacturer's load-out facility and the brewing adjunct used by the manufacturer were exempt from use tax pursuant to subsections (1)(y) and (1)(f), respectively. Coors Brewing Co. v. Fagan, 949 P.2d 110 (Colo. App. 1997).

39-26-714. Vending machines - definitions. (1) (a) Every vendor selling individual items of personal property through vending machines shall pay a sales tax pursuant to section 39-26-106 (2) (b) on the personal property sold in excess of fifteen cents through the vending machines unless the sale is otherwise exempt under the provisions of this part 7.

(b) To be eligible for the exemption provided for in this subsection (1), each vendor shall:

(I) Be licensed under section 39-26-103;

(II) Maintain a record of the identification number, ownership, location, and disposition of every vending machine used by the vendor in his or her operation as a vendor;

(III) Within sixty days after commencing business as such vendor, submit to the department of revenue an accurate list containing the information required under subparagraph (II) of this paragraph (b) and submit such list annually thereafter on January 1, commencing in 1971;

(IV) Make application to the department of revenue for identification numbers to be affixed to every such vending machine, in accordance with rules promulgated by the executive director of the department of revenue;

(V) Remit a fee of ten cents per machine with the application submitted under subparagraph (IV) of this paragraph (b), to defray the expenses of the department of revenue in furnishing the identification numbers; except that the executive director of the department of revenue by rule or as otherwise provided by law may reduce the amount of the fee if necessary pursuant to section 24-75-402 (3), C.R.S., to reduce the uncommitted reserves of the fund to which all or any portion of the fee is credited. After the uncommitted reserves of the fund are sufficiently reduced, the executive director by rule or as otherwise provided by law may increase the amount of the fee as provided in section 24-75-402 (4), C.R.S.

(c) Any unregistered vending machine found being used for retail sales at any place in this state without the prescribed identification number affixed thereto may be seized without warrant by the department of revenue, its agents, or employees or by any peace officer when directed or requested by the department. At the time of seizure, written notice of seizure shall be given to the proprietor or person in charge of the business, or to the agents or employees of the proprietor or person in charge of the business, where the vending machine is seized. The department shall also give notice by first-class mail as set forth in section 39-21-105.5 to the person whose name and mailing address appear on the machine. The department shall not be required to seize and confiscate any unregistered vending machine or assess a penalty when there is reason to believe that the owner is not intentionally evading the tax imposed by this article.

(d) In addition to any other penalty provided by law, the department of revenue is authorized to assess and collect a penalty of twenty-five dollars for each unregistered vending machine being operated in this state.

(e) Upon proof of ownership, the department of revenue shall deliver to the owner any vending machine seized under paragraph (c) of this subsection (1) after payment of the twenty-five-dollar penalty and seizure costs, if the owner is liable therefor, and upon registration of the machine. At the expiration of sixty days after the date of notice, any unregistered vending machine and the contents therein still in the possession of the department may be sold at public sale to the highest bidder, but, prior to any such sale, ten days' notice of the sale shall be given by first-class mail as set forth in section 39-21-105.5 to those entitled to notice under paragraph (c) of this subsection (1).

(2) On and after January 1, 2000, all sales and purchases of food, as defined in section 39-26-102 (4.5), by or through vending machines shall be exempt from taxation under the provisions of part 1 of this article; except that, on and after May 1, 2010, sales and

purchases of candy and soft drinks by or through vending machines shall be subject to state sales taxation. Absent an express provision in the contract to the contrary, any vending machine contract that references the price at which products shall be sold from a vending machine shall be interpreted to include any applicable sales tax as an addition to the referenced price.

(3) On and after January 1, 2000, the storage, use, or consumption of food, as defined in section 39-26-102 (4.5), purchased by or through vending machines shall be exempt from taxation under the provisions of part 2 of this article; except that, on and after May 1, 2010, the storage, use, or consumption of candy and soft drinks purchased by or through vending machines shall be subject to state use taxation.

(4) For the purposes of this section:

(a) "Candy" means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruit, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces. "Candy" shall not include any preparation containing flour and shall require no refrigeration.

(b) "Soft drinks" means nonalcoholic beverages that contain natural or artificial sweeteners. "Soft drinks" do not include beverages that contain milk or milk products, soy, rice, or similar milk substitutes, or greater than fifty percent of vegetable or fruit juice by volume.

(5) The department of revenue shall promulgate rules, in accordance with article 4 of title 24, C.R.S., to provide a means by which a person who sells candy or soft drinks purchased by and through vending machines may, if necessary, reasonably estimate the amount of sales taxes due on such candy and soft drinks. For any return made prior to August 1, 2010, a person who sells candy or soft drinks at retail shall not be liable for any interest or other penalty imposed as a result of an error made in connection with the elimination of the exemption from state sales tax for sales of candy and soft drinks, as defined in subsection (4) of this section, by House Bill 10-1191, enacted in 2010.

Source: L. 2004: Entire part added with relocations, p. 1027, § 2, effective July 1. L. 2010: (2) and (3) amended and (4) and (5) added, (HB 10-1191), ch. 7, p. 46, § 3, effective February 24.

Editor's note: The provisions of this section are similar to several former provisions of §§ 39-26-114 and 39-26-203 as they existed prior to 2004. For a detailed comparison, see the comparative tables located in the back of the index.

39-26-715. Fuel and oil. (1) (a) The following shall be exempt from taxation under the provisions of part 1 of this article:

(I) All commodities that are taxed under the provisions of article 27 of this title; and all commodities that are taxed under said provisions and the tax is refunded; and all sales and purchases of aviation fuel upon which no Colorado sales tax was in fact collected and retained prior to July 1, 1963; except that aviation fuel used in turbo-propeller or jet engine aircraft and upon which a sales tax was collected prior to January 1, 1989, shall not be exempt.

(II) Effective July 1, 1980, all sales and purchases of electricity, coal, wood, gas, fuel oil, or coke sold, but not for resale, to occupants of residences, whether owned, leased, or rented by said occupants, for the purpose of operating residential fixtures and appliances that provide light, heat, and power for such residences. For purposes of this subparagraph (II), "gas" includes natural, manufactured, and liquefied petroleum gas.

(b) Based upon reports submitted by retailers pursuant to the provisions of part 1 of this article, the department of revenue shall compile a monthly report showing the amount of sales taxes collected on aviation fuel used in turbo-propeller or jet engine aircraft during the previous month by each retailer. The monthly report shall be transmitted to the aeronautics division created in section 43-10-103, C.R.S., for use by the division in distributing moneys in the aviation fund in accordance with section 43-10-110, C.R.S.

(2) The following shall be exempt from taxation under the provisions of part 2 of this article:

(a) (I) The storage, use, or consumption of gasoline that is taxed under the provisions of part 1 of article 27 of this title and all gasoline that is taxed under said provisions and the tax on which is refunded and special fuel, as defined in section 39-27-101 (29), used for the operation of farm vehicles when the same are being used on farms or ranches; except that aviation fuel used in turbo-propeller or jet engine aircraft and upon which a tax was collected pursuant to the provisions of part 2 of this article prior to January 1, 1989, shall not be exempt.

(II) Based upon reports submitted by users or consumers pursuant to the provisions of part 2 of this article, the department of revenue shall compile a monthly report showing the amount of use taxes collected on aviation fuel used in turbo-propeller or jet engine aircraft during the previous month by each user or consumer. The monthly report shall be transmitted to the aeronautics division created in section 43-10-103, C.R.S., for use by the division in distributing moneys in the aviation fund in accordance with section 43-10-110, C.R.S.

(b) (I) The storage, use, or consumption of electricity, coal, coke, fuel oil, steam, nuclear fuel, or gas for use in processing, manufacturing, mining, refining, irrigation, building construction, telegraph, telephone, and radio communication, street and railroad transportation services, and all industrial uses.

(II) and (III) Repealed.

(c) Effective July 1, 1980, the storage, use, or consumption of electricity, coal, wood, gas, fuel oil, or coke sold, but not for resale, to any occupant of a residence, whether owned, leased, or rented by the occupant, for the purpose of operating fixtures or appliances that provide light, heat, or power for the residence. For the purposes of this paragraph (c), "gas" includes natural, manufactured, and liquefied petroleum gas.

(3) In any case in which a sales tax has been imposed under part 1 of this article on lubricating oil used other than in motor vehicles, the purchaser shall be entitled to a refund equal to the amount of the state sales tax paid on that portion of the sale price that is attributable to the federal excise tax imposed on the sale of such lubricating oil. In any case in which a use tax has been imposed under part 2 of this article on lubricating oil used other than in motor vehicles, the payer of such tax is entitled to a refund equal to the amount of such use tax paid on that portion of the amount upon which the use tax was imposed that is attributable to the federal excise tax paid on such lubricating oil. The refund allowed under this subsection (3) shall be paid by the executive director of the department of revenue upon receiving evidence that the purchaser has received under section 6424 of the federal "Internal Revenue Code of 1986", as amended, a refund of the federal excise tax paid on the sale of such lubricating oil. The claim for a refund shall be made upon such forms as shall be prescribed and furnished by the executive director, which forms shall contain such information as the executive director may prescribe.

Source: L. 2004: Entire part added with relocations, p. 1029, § 2, effective July 1. L. 2010: (2)(b) amended, (HB 10-1190), ch. 6, p. 42, § 2, effective February 24.

Editor's note: (1) The provisions of this section are similar to several former provisions of §§ 39-26-114 and 39-26-203 as they existed prior to 2004. For a detailed comparison, see the comparative tables located in the back of the index.

(2) Subsection (2)(b)(III) provided for the repeal of subsections (2)(b)(II) and (2)(b)(III), effective July 1, 2012. (See L. 2010, p. 42.)

39-26-716. Agriculture and livestock - special fuels - definitions - repeal. (1) For purposes of this section, unless the context otherwise requires:

(a) "Agricultural compounds" means:

(I) Insecticides, fungicides, growth-regulating chemicals, enhancing compounds, vaccines, and hormones;

(II) Drugs, whether dispensed in accordance with a prescription or not, that are used for the prevention or treatment of disease or injury in livestock; and

(III) Animal pharmaceuticals that have been approved by the food and drug administration.

(b) "Attachments" means any equipment or machinery added to an exempt farm tractor or implement of husbandry that aids or enhances the performance of such tractor or implement.

(c) "Dairy equipment" means any item that is used at a farm dairy in connection with the production of raw milk and not at a commercial dairy in connection with the production of pasturized, separated milk products for retail sale, including, without limitation, milking claws, shells, inflators, pulsators, meters, cow identification systems, transponders, automatic takeoffs, piping, receiver jars, pumps, filter assemblies, milk containment tanks, cooling compressors, wash vats, clean in place assemblies, wash lines, wash control units, pulsator controls, milking system controls, programmable logical control systems, vacuum pumps, vacuum distribution tanks, backflush and related valves, rubber and similar hoses, rubber and similar gaskets, and any other similar or related item used in any farm dairy facility or farm dairy operation or in the production of raw milk, regardless of whether or not the item has become a fixture. To the extent the farm dairy is also involved in the production of pasturized, separated milk products for retail sale, only the equipment used exclusively in the production of raw milk constitutes dairy equipment for purposes of this section.

(d) "Farm equipment" means any farm tractor, as defined in section 42-1-102 (33), C.R.S., any implement of husbandry, as defined in section 42-1-102 (44), C.R.S., and irrigation equipment having a per unit purchase price of at least one thousand dollars. "Farm equipment" also includes, regardless of purchase price, attachments and bailing wire, binders twine, and surface wrap used primarily and directly in any farm operation. On and after July 1, 2000, "farm equipment" also includes, regardless of purchase price, parts that are used in the repair or maintenance of the farm equipment described in this paragraph (d), all shipping pallets, crates, or aids paid for by a farm operation, and aircraft designed or adapted to undertake agricultural applications. On and after July 1, 2001, "farm equipment" also includes, regardless of purchase price, dairy equipment. Except for shipping pallets, crates, or aids used in the transfer or shipping of agricultural products, "farm equipment" does not include:

(I) Vehicles subject to the registration requirements of section 42-3-103, C.R.S., regardless of the purpose for which such vehicles are used;

(II) Machinery, equipment, materials, and supplies used in a manner that is incidental to a farm operation;

(III) Maintenance and janitorial equipment and supplies; and

(IV) Tangible personal property used in any activity other than farming, such as office equipment and supplies and equipment and supplies used in the sale or distribution of farm products, research, or transportation.

(e) "Farm operation" means the production of any of the following products for profit, including, but not limited to, a business that hires out to produce or harvest such products:

(I) Agricultural, viticultural, fruit, and vegetable products;

(II) Livestock, as defined in section 39-26-102 (5.5);

(III) Milk;

(IV) Honey; and

(V) Poultry and eggs.

(2) The following shall be exempt from taxation under the provisions of part 1 of this article:

(a) The sale of special fuel, as defined in section 39-27-101 (29), used for the operation of farm vehicles when such vehicles are being used on farms and ranches;

(b) All sales and purchases of farm equipment;

(c) (I) Any farm equipment under lease or contract, if the fair market value of the equipment is at least one thousand dollars and the equipment is rented or leased for use primarily and directly in any farm operation.

(II) The lessor or seller of such farm equipment shall obtain a signed affidavit from the lessee, renter, or purchaser affirming that the farm equipment will be used primarily and directly in a farm operation.

(d) (I) Before July 1, 2012, all sales and purchases of agricultural compounds to be consumed by, administered to, or otherwise used in caring for livestock and all sales and purchases of semen for agricultural or ranching purposes.

(II) This paragraph (d) is repealed, effective June 30, 2013.

(e) (I) Before July 1, 2012, all sales and purchases of pesticides that are registered by the commissioner of agriculture for use in the production of agricultural and livestock products pursuant to the provisions of the "Pesticide Act", article 9 of title 35, C.R.S., and offered for sale by dealers licensed to sell such pesticides pursuant to section 35-9-115, C.R.S.

(II) This paragraph (e) is repealed, effective June 30, 2013.

(3) The following shall be exempt from taxation under the provisions of part 2 of this article:

(a) The storage and use of neat cattle, sheep, lambs, swine, and goats within this state, or the storage and use within this state of mares and stallions kept, held, and used for breeding purposes only;

(b) The storage, use, or consumption of farm equipment;

(c) (I) Any farm equipment under lease or contract if the fair market value of such equipment is at least one thousand dollars and the equipment is rented or leased for storage, use, or consumption primarily and directly in any farm operation.

(II) The lessor shall obtain a signed affidavit from the lessee or renter affirming that the farm equipment will be stored, used, or consumed primarily and directly in a farm operation.

(d) (I) Before July 1, 2012, the storage, use, or consumption of agricultural compounds to be consumed by, administered to, or otherwise used in caring for livestock and semen used for agricultural or ranching purposes.

(II) This paragraph (d) is repealed, effective June 30, 2013.

(e) (I) Before July 1, 2012, the storage, use, or consumption of pesticides that are registered by the commissioner of agriculture for use in the production of agricultural and livestock products pursuant to the provisions of the "Pesticide Act", article 9 of title 35, C.R.S., and offered for sale by dealers licensed to sell such pesticides pursuant to section 35-9-115, C.R.S.

(II) This paragraph (e) is repealed, effective June 30, 2013.

(4) The following shall be exempt from taxation under the provisions of parts 1 and 2 of this article:

(a) All sales and purchases of livestock, all sales and purchases of live fish for stocking purposes, and all farm close-out sales and the storage, use, or consumption of such property;

(b) All sales and purchases of feed for livestock, all sales and purchases of seeds, and all sales and purchases of orchard trees and the storage, use, or consumption of such property; and

(c) All sales and purchases of straw and other bedding for use in the care of livestock or poultry and the storage, use, or consumption of straw and other bedding for use in the care of livestock or poultry.

(5) (Deleted by amendment, L. 2011, (HB 11-1005), ch. 194, p. 755, § 3, effective July 1, 2011.)

Source: **L. 2004:** Entire part added with relocations, p. 1030, § 2, effective July 1. **L. 2010:** (2)(d), (2)(e), (3)(d), and (3)(e) amended and (5) added, (HB 10-1195), ch. 11, p. 62, § 1, effective February 24. **L. 2011:** (2)(d), (2)(e), (3)(d), (3)(e), and (5) amended, (HB 11-1005), ch. 194, p. 755, § 3, effective July 1. **L. 2012:** (2)(d), (2)(e), (3)(d), and (3)(e) amended, (HB 12-1037), ch. 251, p. 1248, § 3, effective June 4.

Editor's note: The provisions of this section are similar to several former provisions of §§ 39-26-114 and 39-26-203 as they existed prior to 2004. For a detailed comparison, see the comparative tables located in the back of the index.

39-26-717. Drugs and medical and therapeutic devices - definitions. (1) The following shall be exempt from taxation under the provisions of part 1 of this article:

(a) All sales of prescription drugs dispensed in accordance with a prescription by a licensed provider or furnished by a licensed provider as part of professional services provided to a patient or client;

(b) All sales of insulin in all its forms dispensed pursuant to the direction of a licensed provider;

(c) All sales of glucose useable for treatment of insulin reactions;

(d) All sales of urine- and blood-testing kits and materials;

(e) All sales of insulin measuring and injecting devices, including hypodermic syringes and needles;

(f) All sales of prosthetic devices;

(g) (I) All sales of oxygen delivery equipment and disposable medical supplies related to oxygen delivery dispensed pursuant to a prescription.

(II) For purposes of this paragraph (g), "prescription" means any order in writing, dated and signed by a licensed physician, physician's assistant, or advanced practice nurse with prescriptive authority, or given orally by such a person and immediately reduced to writing by the pharmacist, assistant pharmacist, or pharmacy intern, or by a representative of a business licensed to sell items described in subparagraph (I) of this paragraph (g) so long as such order is also followed by an electronic submission of the order to the business, specifying the name and address of the person for whom an item described in subparagraph (I) of this paragraph (g) is ordered and directions, if any, to be included with such item.

(h) (I) All sales of medical, feeding, and disposable supplies, including any related accessories, for incontinence, infusion, enteral nutrition, ostomy, urology, diabetic care, and wound care dispensed pursuant to a prescription.

(II) For purposes of this paragraph (h), "prescription" means any order in writing, dated and signed by a licensed physician, physician's assistant, or advanced practice nurse with prescriptive authority, or given orally by such a person and immediately reduced to writing by the pharmacist, assistant pharmacist, or pharmacy intern, or by a representative of a business licensed to sell items described in subparagraph (I) of this paragraph (h) so long as such order is also followed by an electronic submission of the order to the business, specifying the name and address of the person for whom an item described in subparagraph (I) of this paragraph (h) is ordered and directions, if any, to be included with such item.

(i) (I) All sales of equipment and related accessories for sleep therapy, inhalation therapy, and electrotherapy dispensed pursuant to a prescription.

(II) For purposes of this paragraph (i), "prescription" means any order in writing, dated and signed by a licensed physician, physician's assistant, or advanced practice nurse with prescriptive authority, or given orally by such a person and immediately reduced to writing by the pharmacist, assistant pharmacist, or pharmacy intern, or by a representative of a business licensed to sell items described in subparagraph (I) of this paragraph (i) so long as such order is also followed by an electronic submission of the order to the business, specifying the name and address of the person for whom an item described in subparagraph (I) of this paragraph (i) is ordered and directions, if any, to be included with such item.

(j) All sales of durable medical equipment and mobility enhancing equipment;

(k) All sales of nonprescription drugs or materials when furnished by a licensed provider as part of professional services provided to a patient; and

(l) All sales of corrective eyeglasses, contact lenses, or hearing aids.

(2) As used in this section, unless the context otherwise requires:

(a) (I) "Durable medical equipment" means equipment, including repair and replacement parts for such equipment, dispensed pursuant to a prescription, that:

(A) Can withstand repeated use;

(B) Is primarily and customarily used to serve a medical purpose;

(C) Is generally not useful to a person in the absence of illness or injury; and

(D) Is not worn in or on the body.

(II) "Durable medical equipment" includes, but is not limited to, hospital beds, intravenous poles and pumps, trapeze bars, toileting aids, bath and shower aids, standing aids, adaptive car seats, communication devices, and any related accessories for such items.

(III) For purposes of this paragraph (a), "prescription" means any order in writing, dated and signed by a licensed physician, physician's assistant, or advanced practice nurse

with prescriptive authority, or given orally by such a person and immediately reduced to writing by the pharmacist, assistant pharmacist, or pharmacy intern, or by a representative of a business licensed to sell items of durable medical equipment so long as such order is also followed by an electronic submission of the order to the business, specifying the name and address of the person for whom an item of durable medical equipment is ordered and directions, if any, to be included with the equipment.

(b) (I) “Mobility enhancing equipment” means equipment, including repair and replacement parts for such equipment, dispensed pursuant to a prescription, that:

(A) Is primarily and customarily used to provide or increase the ability to move from one place to another;

(B) Is appropriate for use in a home, in a person’s community, or in a motor vehicle;

(C) Is not generally used by persons with normal mobility; and

(D) Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.

(II) “Mobility enhancing equipment” includes, but is not limited to, wheelchairs and wheelchair components or accessories, walking aids such as crutches, canes, or walkers, grab bars, trapeze bars, lift chairs, patient lifts, motorized carts, scooters, controls that are installed on motor vehicles, and any related accessories for such items.

(III) For purposes of this paragraph (b), “prescription” means any order in writing, dated and signed by a licensed physician, physician’s assistant, or advanced practice nurse with prescriptive authority, or given orally by such a person and immediately reduced to writing by the pharmacist, assistant pharmacist, or pharmacy intern, or by a representative of a business licensed to sell items of mobility enhancing equipment so long as such order is also followed by an electronic submission of the order to the business, specifying the name and address of the person for whom an item of mobility enhancing equipment is ordered and directions, if any, to be included with the equipment.

(3) For purposes of this section, “licensed provider” means any person authorized to prescribe drugs under the provisions of title 12, C.R.S.

Source: **L. 2004:** Entire part added with relocations, p. 1034, § 2, effective July 1. **L. 2011:** (1)(a) and (1)(b) amended and (3) added, (SB 11-263), ch. 278, p. 1247, § 1, effective July 1; entire section amended, (HB 11-1091), ch. 235, p. 1011, § 1, effective August 10.

Editor’s note: (1) The provisions of this section are similar to several former provisions of § 39-26-114 as they existed prior to 2004. For a detailed comparison, see the comparative tables located in the back of the index.

(2) Amendments to provisions of subsection (1) by House Bill 11-1091 and Senate Bill 11-263 were harmonized.

(3) Provisions of subsection (1) were amended in Senate Bill 11-263. Those amendments were superseded by the repeal of said provisions in House Bill 11-1091. For the amendments to subsection (1) that were in effect from July 1, 2011, to August 10, 2011, see chapter 278, Session Laws of Colorado 2011. (L. 2011, p. 1247.)

39-26-718. Charitable organizations - association or organization of parents and teachers of public school students. (1) The following shall be exempt from taxation under the provisions of part 1 of this article:

(a) All sales made to charitable organizations, in the conduct of their regular charitable functions and activities; except that any veterans’ organization that qualifies as a charitable organization pursuant to section 39-26-102 (2.5) shall be exempt from taxation under the provisions of part 1 of this article only for the purpose of sponsoring a special event, meeting, or other function in the state of Colorado that is not part of the organization’s regular activities in the state;

(b) (I) Effective July 1, 1995, all occasional sales by a charitable organization.

(II) For purposes of this paragraph (b), “occasional sales” means retail sales of tangible personal property, including concessions, for fund-raising purposes if:

(A) The sale of tangible personal property or concessions by the charitable organization takes place no more than twelve days, whether consecutive or not, during any one calendar year;

(B) The funds raised by the charitable organization through these sales are retained by the organization to be used in the course of the organization's charitable service; and

(C) The funds raised by the charitable organization through these sales do not exceed twenty-five thousand dollars during any one calendar year.

(c) On or after September 1, 2008, a sale by an association or organization of parents and teachers of public school students that is a charitable organization, if the association or organization uses the funds raised through the sale for the benefit of a public school or an organized public school activity or to pay the reasonable expenses of the association or organization.

Source: L. 2004: Entire part added with relocations, p. 1034, § 2, effective July 1.
L. 2008: Entire section amended, p. 973, § 3, effective September 1.

Editor's note: Subsection (1)(a) is similar to former § 39-26-114 (1)(a)(II), and subsection (1)(b) is similar to former § 39-26-114 (18), as they existed prior to 2004.

ANNOTATION

Annotator's note. Since § 39-26-718 is similar to § 39-26-114 and § 39-26-203 as they existed prior to their 2004 repeal and relocation to this part 7, relevant cases construing those provisions have been included in the annotations to this section.

Law reviews. For article, "State and Local Sales and Use Tax Exemptions for Colorado Charitable Organizations", see 29 Colo. Law. 55 (August 2000).

The definition of "charitable organization" in a municipal tax code lends itself to two conflicting plain-meaning interpretations. In the first interpretation, in order to be eligible for a sales and use tax exemption, both religious and nonreligious charitable organizations must meet strict guidelines; in the second, a distinction is made between religious and charitable organizations, and the guidelines apply only to those organizations whose functions are nonreligious in nature. The court is obligated to support the first interpretation so as to avoid invoking a violation of the establishment clause of the federal constitution. *Catholic Health Initiatives Colo. v. City of Pueblo*, 207 P.3d 812 (Colo. 2009).

Tax incentives that inure only to the benefit of religious organizations solely by virtue of their religious nature violate the establishment clause. *Catholic Health Initiatives Colo. v. City of Pueblo*, 207 P.3d 812 (Colo. 2009).

A sales or use tax exemption for a charitable organization, whether religious or secular, must serve a broad, secular purpose. *Catholic Health Initiatives Colo. v. City of Pueblo*, 207 P.3d 812 (Colo. 2009).

Company purchases made for charitable functions exempt. Purchases made by a company in connection with its charitable functions

and activities, regardless of the nature of its ordinary business, are exempt from the operation of this article. *Bedford v. Colo. Fuel & Iron Corp.*, 102 Colo. 538, 81 P.2d 752 (1938).

Only purchases used in regular charitable activities. Only those purchases by charitable organizations which are for use in the conduct of their regular charitable functions and activities are exempt from the sales and use tax. *Sec. Life & Accident Co. v. Heckers*, 177 Colo. 455, 495 P.2d 225 (1972).

Purchases by charitable organizations for use in charitable functions exempt. Those purchases by charitable organizations which are for use in the conduct of their regular charitable functions and activities are exempt from the sales and use tax. *Sec. Life & Accident Co. v. Heckers*, 177 Colo. 455, 495 P.2d 225 (1972).

Fraternal benevolent societies are not exempt from sales taxes that were not contemplated in 1911 when they were declared to be "charitable and benevolent institution[s]" when such sales tax was first adopted in 1935 and the legislature imposed the tax on "all sales and purchases of tangible personal property at retail". This is particularly true if the legislation that created the tax listed specific exemptions that did not include fraternal benevolent societies. *Colo. Dept. of Rev. v. Woodmen of the World*, 919 P.2d 806 (Colo. 1996).

The reintroduction of the words "and every" to a phrase making it read "all and every state tax" does not strengthen and reaffirm the broad scope of the exemption for fraternal benefit societies, it merely was replaced after being determined by the revisor of statutes to be redundant. The meaning of the phrase remains unchanged. *Colo. Dept. of Rev. v. Woodmen of the World*, 919 P.2d 806 (Colo. 1996).

Applied in *First Lutheran Mission v. Dept. of Rev.*, 44 Colo. App. 417, 613 P.2d 351 (1980).

39-26-719. Motor vehicles. (1) (a) There shall be exempt from taxation under the provisions of part 1 of this article the sale of any motor vehicle, power source for any motor vehicle, or parts used for converting the power source for any motor vehicle, if the gross vehicle weight rating of the motor vehicle is greater than ten thousand pounds and if the motor vehicle, power source, or parts used for converting the power source are certified by the federal environmental protection agency or any state as provided in the “Federal Clean Air Act” as meeting an emission standard equal to or more stringent than the low-emitting vehicle emission standard.

(b) For purposes of this subsection (1), unless the context otherwise requires:

(I) “Motor vehicle” means any self-propelled vehicle required to be licensed or subject to licensing for operation upon the highways of this state, including a vehicle that uses a hybrid propulsion system.

(II) “Parts used for converting” shall mean the wiring, fuel lines, engine coolant system, fuel storage containers, fuel control system, and other components associated with reducing the emissions characteristics of an engine or motor.

(III) “Power source” means the engine or motor and associated wiring, fuel lines, engine coolant system, fuel storage containers, and miscellaneous components.

(2) The following shall be exempt from taxation under the provisions of part 2 of this article:

(a) The storage, use, or consumption of a motor vehicle, if the owner is or was, at the time of purchase, a nonresident of Colorado and the owner purchased the vehicle outside of this state for use outside this state and actually so used it for a substantial and primary purpose for which it was acquired and the owner registered, titled, and licensed said motor vehicle outside of Colorado.

(b) (I) The storage, use, or consumption of a motor vehicle, power source for a motor vehicle, and parts used for converting the power source of a motor vehicle, if the gross vehicle weight rating of the motor vehicle is greater than ten thousand pounds and if the motor vehicle, power source, or parts used for converting the power source are certified by the federal environmental protection agency or any state as provided in the “Federal Clean Air Act” as meeting an emission standard equal to or more stringent than the low-emitting vehicle emission standard.

(II) For purposes of this paragraph (b), unless the context otherwise requires:

(A) “Motor vehicle” means any self-propelled vehicle required to be licensed or subject to licensing for operation upon the highways of this state, including a vehicle that uses a hybrid propulsion system.

(B) “Parts used for converting” shall mean the wiring, fuel lines, engine coolant system, fuel storage containers, fuel control system, and other components associated with reducing the emissions characteristics of an engine or motor.

(C) “Power source” means the engine or motor and associated wiring, fuel lines, engine coolant system, fuel storage containers, and miscellaneous components.

Source: **L. 2004:** Entire part added with relocations, p. 1035, § 2, effective July 1. **L. 2009:** (1)(b)(I), (1)(b)(III), (2)(b)(II)(A), and (2)(b)(II)(C) amended, (HB 09-1331), ch. 416, p. 2310, § 11, effective June 4.

Editor’s note: The provisions of this section are similar to several former provisions of §§ 39-26-114 and 39-26-203 as they existed prior to 2004. For a detailed comparison, see the comparative tables located in the back of the index.

Cross references: In 2009, subsections (1)(b)(I), (1)(b)(III), (2)(b)(II)(A), and (2)(b)(II)(C) were amended by the “Motor Vehicle Innovation Act”. For the short title, see section 1 of chapter 416, Session Laws of Colorado 2009.

39-26-720. Bingo equipment. (1) All sales of equipment, as defined in section 12-9-102 (5), C.R.S., to a bingo-raffle licensee, as defined in section 12-9-102 (1.2), C.R.S., shall be exempt from taxation under part 1 of this article.

(2) The storage, use, or consumption of equipment, as defined in section 12-9-102 (5), C.R.S., by a bingo-raffle licensee, as defined in section 12-9-102 (1.2), C.R.S., shall be exempt from taxation under part 2 of this article.

Source: L. 2004: Entire part added with relocations, p. 1036, § 2, effective July 1.

Editor's note: Subsection (1) is similar to former § 39-26-114 (24), and subsection (2) is similar to former § 39-26-203 (1)(nn), as they existed prior to 2004.

39-26-721. Manufactured homes. (1) Forty-eight percent of the purchase price of factory-built housing, as such housing is defined in section 24-32-3302 (10), C.R.S., shall be exempt from taxation under part 1 of this article; except that the entire purchase price in any subsequent sale of a manufactured home, as such vehicle is defined in section 42-1-102 (106) (b), C.R.S., after such manufactured home has been once subject to the payment of sales tax by virtue of section 39-26-113, shall be exempt from taxation under part 1 of this article.

(2) The storage, use, or consumption of a manufactured home, as such vehicle is defined in section 42-1-102 (106) (b), C.R.S., after such manufactured home has been once subject to the payment of use tax by virtue of section 39-26-208, shall be exempt from taxation under the provisions of part 2 of this article.

Source: L. 2004: Entire part added with relocations, p. 1036, § 2, effective July 1.

Editor's note: Subsection (1) is similar to former § 39-26-114 (10), and subsection (2) is similar to former § 39-26-203 (1)(o), as they existed prior to 2004.

39-26-722. Cleanrooms - definitions - repeal. (1) Except as provided in subsection (3) of this section, for fiscal years commencing on or after July 1, 2007, but prior to the fiscal year commencing on July 1, 2017, all sales, storage, and use of machinery that comprises a cleanroom, in excess of five hundred dollars, that is used to produce tangible property, including but not limited to computer components, microprocessors, blank and written software media, other high-tech manufacturing products, biotechnological products, nanotechnological products, photonics products, and pharmaceuticals shall be exempt from taxation under the provisions of parts 1 and 2 of this article.

(2) (a) As used in this section, "cleanrooms" means an environment with a level of environmental pollutants such as dust, airborne microbes, aerosol particles, and chemical vapors equal to or less than the maximum number of particles per cubic meter as specified by ISO 14644-1, class 6, or such other succeeding definition adopted by the international organization for standardization.

(b) (I) As used in this section, "machinery that comprises a cleanroom" shall include, but shall not be limited to, the following machinery without regard to whether the machinery is affixed to or incorporated into real property or actually contained within the cleanroom: Integrated systems, fixtures, process piping, valves, electrical components, chillers, pumps, ducts, air management systems, tanks, motors, computers, or any other related apparatus that constitutes an assemblage of interrelated machines with separate functions and that collectively operate in a continuous process to reduce contamination or to control airflow, temperature, humidity, chemical purity, other environmental conditions, or manufacturing tolerances. "Machinery that comprises a cleanroom" also includes production equipment, moveable cleanroom partitions, and cleanroom lighting.

(II) As used in this section, "machinery that comprises a cleanroom" shall not include a building or a permanent, nonremovable component of a building that houses the cleanroom.

(3) If the revenue estimate prepared by the staff of the legislative council in June 2008 and each June thereafter through June 2016 indicates that the amount of the total general fund revenues for the fiscal year will not be sufficient to grow the total state general fund appropriations by six percent over such appropriations for the previous fiscal year, then the

exemption as specified in subsection (1) of this section for the fiscal year commencing immediately following the June revenue estimate shall not be allowed.

(4) This section is repealed, effective July 1, 2018.

Source: L. 2007: Entire section added, p. 1607, § 1, effective July 1. **L. 2009:** (3) amended, (SB 09-228), ch. 410, p. 2269, § 22, effective July 1.

39-26-723. Colorado wood products - repeal. (1) For fiscal years commencing on or after July 1, 2008, but prior to the fiscal year commencing on July 1, 2020, all sales, storage, and use of wood from salvaged trees killed or infested in Colorado by mountain pine beetles or spruce beetles, including but not limited to products such as lumber, furniture built from the salvaged trees, and wood chips or wood pellets generated from the salvaged trees, are exempt from taxation under the provisions of parts 1 and 2 of this article.

(2) For purposes of the exemption specified in subsection (1) of this section, a wholesaler shall certify on a form prescribed by the department of revenue that a product is from salvaged trees killed or infested in Colorado by mountain pine beetles or spruce beetles.

(3) This section is repealed, effective July 1, 2021.

Source: L. 2008: Entire section added, p. 1545, § 2, effective May 28. **L. 2012:** Entire section amended, (HB 12-1045), ch. 191, p. 765, § 1, effective May 21.

Editor's note: Section 4 of chapter 191, Session Laws of Colorado 2012, provides that the act amending this section applies to the sales, storage, and use on or after July 1, 2012, of wood from salvaged trees killed or infested in Colorado by spruce beetles.

Cross references: For the legislative declaration contained in the 2008 act enacting this section, see section 1 of chapter 332, Session Laws of Colorado 2008.

39-26-724. Components used to produce energy from a renewable energy source - definitions. (1) (a) For fiscal years commencing on or after July 1, 2006, all sales, storage, and use of components used in the production of alternating current electricity from a renewable energy source, including but not limited to wind, shall be exempt from taxation under parts 1 and 2 of this article.

(b) For state fiscal years 2009-10 through 2016-17, all sales, storage, and use of components used in solar thermal systems shall be exempt from taxation under parts 1 and 2 of this article.

(2) As used in this section:

(a) "Components used in solar thermal systems" shall include, but shall not be limited to:

(I) Solar collectors, including flat-plate collectors, evacuated tube collectors, solar air collectors, and concentrating solar thermal collectors;

(II) Tanks for the storage of gases or liquids that have been heated or cooled by solar-generated energy;

(III) Pumps, impellers, and fans for the circulation of gases or liquids that have been heated or cooled by solar-generated energy;

(IV) Heat exchangers used to transfer solar-generated energy;

(V) Support structures, racks, and foundations for any components listed in subparagraphs (I) to (IV) of this paragraph (a); and

(VI) Any other system components such as piping, valves, gauges, fittings, insulation, and controls for any components listed in subparagraphs (I) to (IV) of this paragraph (a).

(b) (I) "Components used in the production of alternating current electricity from a renewable energy source" shall include, but shall not be limited to, wind turbines, rotors and blades, solar modules, trackers, generating equipment, supporting structures or racks, inverters, towers and foundations, balance of system components such as wiring, control systems, switchgears, and generator step-up transformers, and concentrating solar power components that include, but are not limited to, mirrors, plumbing, and heat exchangers.

(II) “Components used in the production of alternating current electricity from a renewable energy source” shall not include any components beyond the point of generator step-up transformers located at the production site, labor, energy storage devices, or remote monitoring systems.

(c) “Solar thermal system” means a system whose primary purpose is to use energy from the sun to produce heat or cold for:

- (I) Heating or cooling a residential or commercial building;
- (II) Heating or cooling water; or
- (III) Any industrial, commercial, or manufacturing process.

Source: **L. 2008:** Entire section added, p. 1320, § 4, effective May 27. **L. 2009:** Entire section amended, (HB 09-1126), ch. 254, p. 1148, § 3, effective May 15.

Cross references: (1) For the legislative intent contained in the 2008 act enacting this section, see section 9 of chapter 302, Session Laws of Colorado 2008.

(2) For the legislative declaration contained in the 2009 act amending this section, see section 1 of chapter 254, Session Laws of Colorado 2009.

39-26-725. Sales related to a school - definitions. (1) As used in this section, unless the context otherwise requires:

(a) “Parent” means a parent of a student as defined in paragraph (d) of this subsection (1).

(b) “Sale that benefits a Colorado school” means a sale of a commodity or service from which all proceeds of the sale, less only the actual cost of the commodity or service to the person or entity described in subsection (2) of this section, are donated to a school or a school-approved student organization.

(c) “School” means a public or nonpublic school for students in kindergarten through twelfth grade or any portion thereof.

(d) “Student” means any person enrolled in a school as defined in paragraph (c) of this subsection (1).

(2) On or after September 1, 2008, a sale that benefits a Colorado school shall be exempt from taxation under the provisions of part 1 of this article, if the sale is made by any of the following:

- (a) A school;
- (b) An association or organization of parents and school teachers;
- (c) A booster club or other club, group, or organization whose primary purpose is to support a school activity; or
- (d) A school class or student club, group, or organization.

(3) Nothing in this section shall be construed as creating an exemption, or otherwise affecting an existing exemption, for a sale to a person or entity described in subsection (2) of this section.

Source: **L. 2008:** Entire section added, p. 969, § 3, effective August 5. **L. 2009:** (1)(d) amended, (SB 09-292), ch. 369, p. 1980, § 115, effective August 5. **L. 2010:** (1)(a) amended, (HB 10-1422), ch. 419, p. 2122, § 176, effective August 11.

39-26-726. Medical marijuana - debilitating conditions and ability to purchase. All sales of medical marijuana to a patient who is determined to be indigent for purposes of waiving the fee required by section 25-1.5-106, C.R.S., shall be exempt from taxation under part 1 of this article. If the patient is determined to be indigent the state health agency shall mark his or her registry identification card as such and the patient shall present the card to the licensed medical marijuana center to receive the tax exemption.

Source: **L. 2010:** Entire section added, (HB 10-1284), ch. 355, p. 1688, § 14, effective July 1.

ARTICLE 26.1**Colorado Tourism Promotion Fund Tax****39-26.1-101 to 39-26.1-113. (Repealed)**

Editor's note: (1) This article was added in 1983. For amendments to this article prior to its repeal in 1993, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

(2) Section 39-26.1-113 provided for the repeal of this article, effective July 1, 1993. (See L.87, p. 987.)

Gasoline and Special Fuel Tax**ARTICLE 27****Gasoline and Special Fuel Tax**

Cross references: For the constitutional provision that establishes limitations on spending, the imposition of taxes, and the incurring of debt, see § 20 of article X of the state constitution; for the use of a method in lieu of any required oath or affirmation by a person making any return or any application for refund or protest pursuant to this article, see § 24-12-108.

PART 1**GASOLINE TAX**

		39-27-116.	Authority of executive director - enforcement.
		39-27-117.	Filing with executive director - when deemed to have been made.
39-27-101.	Definitions - construction.	39-27-118.	Exchange of information. (Repealed)
39-27-102.	Tax imposed on gasoline and special fuel - deposits - penalties.	39-27-119.	Not applicable to interstate commerce.
39-27-102.5.	Exemptions on tax imposed - ex-tax purchases.	39-27-120.	Penalties.
39-27-103.	Refunds - penalties - checkoff.	39-27-121.	State treasurer custodian of deposits.
39-27-103.5.	Refunds of the tax paid on special fuel. (Repealed)		
39-27-104.	License and deposit - exception.		PART 2
39-27-105.	Collection of tax on gasoline and special fuel.		SPECIAL FUEL TAX
39-27-105.3.	Remittance of tax on gasoline and special fuel - mandatory electronic funds transfers.	39-27-201 to 39-27-218.	(Repealed)
39-27-105.5.	Lien to secure payment of taxes - exemption - recovery.		PART 3
39-27-106.	Distributor trustee of tax.		MOTOR FUELS AGREEMENTS
39-27-107.	When users other than distributors must report.	39-27-301.	Definitions.
39-27-108.	Penalty for failure to report or pay tax.	39-27-302.	Agreements between jurisdictions.
39-27-109.	Reports by carriers. (Repealed)	39-27-303.	Tax imposed.
39-27-109.7.	Data collection services.	39-27-304.	Provisions of agreements.
39-27-110.	Inspection of records.	39-27-305.	Credit for purchases.
39-27-111.	Tax in lieu of all other taxes imposed.	39-27-306.	Tax collection.
39-27-112.	Payment of expenses and distribution of funds.	39-27-307.	Compliance.
39-27-113.	Tax lien - priority.	39-27-308.	Appeals.
39-27-114.	False oath.	39-27-309.	Exchange of information.
39-27-115.	Night deliveries. (Repealed)	39-27-310.	Construction of this part 3 - rules and regulations.

PART 1

GASOLINE TAX

39-27-101. Definitions - construction. As used in this part 1, unless the context otherwise requires:

(1) "Air carrier" means any domestic or foreign aircraft carrying passengers or cargo for hire.

(1.5) "Biodiesel fuel" means a motor vehicle fuel that is produced from plant or animal products or wastes, as opposed to fossil fuel sources.

(2) "Blended gasoline" means any mixture of taxable or tax-exempt gasoline with any other liquid on which the excise tax has not been imposed pursuant to this section.

(3) "Blended special fuel" means any mixture of taxable or tax-exempt special fuel with any other liquid on which the excise tax has not been imposed pursuant to this section, other than special fuel that has been dyed in accordance with federal regulations.

(4) "Blender" means a person who produces blended gasoline or blended special fuel outside of the gasoline or special fuel distribution system consisting of refineries, pipelines, vessels, and terminals. For purposes of this subsection (4), gasoline in a refinery, pipeline, vessel, or terminal is in the gasoline distribution system, and special fuel in a refinery, pipeline, vessel, or terminal is in the special fuel distribution system. Gasoline or special fuel in the tank of any vehicle or in any railcar, trailer, truck, or other equipment suitable for ground transportation is not in the gasoline or special fuel distribution system, respectively.

(5) "Common carrier" or "carrier" means a person, including a railroad operator, who transports gasoline or special fuel from a terminal located in this state or transports gasoline or special fuel imported into this state and who does not own the gasoline or special fuel.

(6) "Direct air carrier" means a person who provides or offers to provide air transportation and who has control over the operational functions performed in providing that transportation. A direct air carrier that provides air transportation services to a public charter operator as defined in subsection (24) of this section has a binding commitment to furnish air transportation to the public charter operator via a charter contract pursuant to 14 CAR 380.29 and shall actively provide such air transportation services to the public charter operator.

(7) (a) "Distributor" means:

(I) A gasoline or special fuel broker and any person who sells special fuel to another distributor, broker, or vendor, and any vendor of liquified petroleum gases;

(II) Any person who acquires gasoline or special fuel from a supplier, importer, blender, or another distributor for the subsequent sale and distribution by tank cars, tank trucks, or both; or

(III) Any person who refines, manufactures, produces, compounds, blends, or imports special fuel or gasoline.

(b) "Distributor" includes every person importing gasoline or special fuel by means of a pipeline or in any other manner but does not include persons importing gasoline or special fuel contained only in the fuel tank of a motor vehicle.

(8) "Dyed diesel" means diesel fuel that is dyed under the rules of the United States environmental protection agency or the internal revenue service for high sulphur diesel fuel or low sulphur diesel fuel or under any other requirements subsequently set by such agencies for special fuel sold for nontaxable uses.

(9) "Exporter" means a person who acquires gasoline or special fuel in this state exclusively for delivery to another state in which he or she is licensed.

(10) "Fuel tank" means any receptacle on a motor vehicle from which fuel is supplied for the propulsion of the vehicle, exclusive of a cargo tank, and includes any separate compartment of a cargo tank used as a fuel tank and any auxiliary tank or receptacle of any kind from which fuel is supplied for the propulsion of the vehicle, whether or not such tank or receptacle is directly connected to the fuel supply line of the vehicle.

(11) "Gallons" means gallons as measured on a gross gallons basis, as defined in section 8-20-201 (3), C.R.S.

(12) "Gasoline" means any flammable liquid used primarily as a fuel for the propulsion of motor vehicles, motor boats, or aircraft. "Gasoline" does not include diesel engine fuel, kerosene, liquefied petroleum gas, natural gas, and products, including kerosene, specially prepared, sold, and used in aircraft operated by scheduled air carriers or commuter airline operators exempt from the federal aviation fuels tax; except that "gasoline" does include products, including kerosene, specially prepared, sold, and used in any other aircraft. Except as otherwise provided in this subsection (12), any product blended with gasoline shall be considered gasoline for purposes of the excise tax imposed pursuant to this part 1.

(13) "Highway" means any way or place in this state of whatever nature, open to the use of the public, for purposes of traffic, including highways under construction.

(14) "Importer" means a person who imports gasoline or special fuel in bulk or by transport load into this state from another state by truck, rail, or pipeline.

(15) "In this state" means within the exterior limits of the state of Colorado and includes all territories within these limits owned by or ceded to the United States of America.

(16) "Indirect air carrier" means any person who engages directly in air transportation operations and who uses the services of a direct air carrier for such transportation services.

(17) "Licensee" means any person holding a valid license issued by the department of revenue pursuant to section 39-27-104, to act as a supplier, importer, exporter, distributor, carrier, or blender.

(18) "Motor vehicle" means any self-propelled vehicle required to be licensed or subject to licensing for operation upon the highways of this state.

(19) "Part 121 air carrier" means an aircraft operator that conducts operations pursuant to 14 CAR 121 between any two points within the forty-eight contiguous states of the United States or within the United States and a specifically authorized point located outside the United States, operating any of the following:

- (a) A turbojet-powered airplane;
- (b) An airplane having a passenger-seat configuration of more than nine passenger seats, excluding each crewmember seat; or
- (c) An airplane having a payload capacity of more than seven thousand five hundred pounds.

(20) "Part 135 commuter air carrier" means an aircraft operator that conducts operations pursuant to 14 CAR 135, operating a minimum of five round trips per week on at least one route between two or more points according to the published flight schedules, operating either of the following:

- (a) Any airplane, other than a turbojet-powered airplane, that has a maximum passenger-seat configuration of nine seats or fewer and a payload capacity of seven thousand five hundred pounds or fewer; or
- (b) A rotorcraft.

(21) "Part 135 on-demand operator" means an aircraft operator that conducts operations for hire or compensation pursuant to 14 CAR 135 in an aircraft with nine or fewer passenger seats and a payload capacity of seven thousand five hundred pounds or fewer. A part 135 on-demand operator operates on an on-demand basis and does not meet the flight scheduled qualifications of a part 135 commuter air carrier.

(22) (a) "Person" means every individual, firm, association, joint stock company, syndicate, limited liability company, partnership, joint venture, corporation, estate, trust, or any group or combination thereof acting as a unit, this state, any county, city and county, municipality, special district, or other political subdivision of this state, or any group or combination of such governmental entities acting as a unit.

(b) Whenever used in any clause in this part 1 prescribing or imposing a fine, imprisonment, or both, "person":

(I) As applied to a firm, association, limited liability company, partnership, joint venture, joint stock company, receiver, or syndicate, means the partners or members thereof;

(II) As applied to a corporation, means the officers or resident managing agent thereof; and

(III) As applied to an estate, trust, or business trust, means the administrator or trustee thereof.

(23) “Public charter” means a one way or round trip charter flight performed by one or more direct air carriers as defined pursuant to subsection (6) of this section and that is arranged and sponsored by a public charter operator pursuant to 14 CAR 380.

(24) “Public charter operator” means a United States or foreign indirect air carrier as defined in subsection (16) of this section that is authorized to engage in the formation of groups for transportation on public charters in accordance with 14 CAR 380.

(25) “Refiner” means a person who processes crude oil or who produces, refines, prepares, distills, or manufactures gasoline or special fuel in this state.

(26) “Refinery” means any place where gasoline, special fuel, or crude oil is produced, refined, compounded, blended, or manufactured.

(27) “Retailer” means every person selling gasoline in this state at the retail level of trade.

(28) “Sell” means to transfer title or possession, exchange, or barter in any manner or by any means whatsoever.

(29) “Special fuel” means diesel engine fuel, kerosene, liquefied petroleum gas, and natural gas used for the generation of power to propel a motor vehicle on the highways of this state. “Special fuel” does not include gasoline as defined in subsection (12) of this section.

(30) “Supplier” means a person who owns and stores gasoline or special fuel in a pipeline terminal, terminal, or refinery in or outside of this state for sale or use within or outside the boundaries of this state.

(31) “Tank farm” means any collection of tanks for storage of gasoline or special fuel located at or appurtenant to any refinery or pipeline terminal for storage of gasoline or special fuel before the sale thereof in this state.

(32) “Terminal” means a gasoline or special fuel storage and distribution facility that is supplied by a pipeline, vessel, or refinery or a tank farm from which gasoline or special fuel may be removed for distribution.

(33) “Terminal operator” means the person who by ownership or contractual agreement controls the operation of a terminal.

(34) “Use” or “uses” means the placing of special fuel into any fuel tank, unless it is established to the satisfaction of the executive director of the department of revenue that the fuel was consumed for a purpose other than to propel a motor vehicle on the highways of this state. With respect to fuel brought into this state in a fuel tank, “use” means the consumption of the fuel in this state. A vendor placing special fuel into a fuel tank of a motor vehicle not owned by the vendor is not deemed to have used the fuel.

(35) “User” means any person who uses special fuel.

(36) “Vendor” means any person who sells special fuel in this state and places the fuel, or causes the fuel to be placed, into any fuel tank or receptacle from which a fuel tank is supplied; including service station dealers, brokers, and users who sell special fuel to others and distributors who sell special fuel to users. For the purposes of this part 1, a vendor of liquefied petroleum gases shall be deemed a distributor and shall comply with all of the requirements imposed upon distributors in this part 1.

Source: L. 33: p. 716, § 1. L. 35: p. 904, § 1. CSA: C. 16, § 381. L. 47: p. 267, § 1. L. 51: p. 182, § 1. CRS 53: § 138-3-1. L. 63: p. 942, § 1. C.R.S. 1963: § 138-2-1. L. 65: p. 1114, § 1. L. 67: p. 235, § 1. L. 79: IP(1), (2), (3)(b), (4), (5), (6), and (8) amended and (7) repealed, pp. 1473, 1501, §§ 1, 29, effective January 1, 1980. L. 81: (1.5) added, p. 1892, § 2, effective May 18. L. 88: (2) amended, p. 1091, § 6, effective January 1, 1989. L. 95: (1), (4), and (5) amended, p. 981, § 1, effective July 1. L. 98: Entire section amended, p. 1021, § 1, effective July 1. L. 2000: (1.1), (1.8), (1.9), (2.1), (2.3), (2.5), (6.1), (6.3), (11), (12), and (13) added with relocations and (1.2), (1.4), (1.5), (1.6), (1.7), (2.2), (5), (6), (6.6), (8), and (9) amended with relocations, p. 1913, § 1, effective October 1. L. 2003: Entire section amended, p. 1812, § 2, effective August 6. L. 2009: (1.5) added, (SB 09-098), ch. 195, p. 877, § 1, effective August 5.

Editor’s note: (1) Subsection (2)(a) provided for the repeal of subsection (2)(a), effective January 1, 1989. (See L. 88, p. 1091.)

(2) The provisions of this section are similar to several former provisions of § 39-27-201 as they existed prior to 2000. For a detailed comparison of this section, see House Bill 00-1479, L. 2000, p. 1913.

Cross references: For the legislative declaration contained in the 2003 act amending this section, see section 1 of chapter 278, Session Laws of Colorado 2003.

ANNOTATION

Law reviews. For note, "'Criminal Equity' in Colorado", see 8 Rocky Mt. L. Rev. 273 (1936).

Part 1 of article does not violate interstate commerce clause of federal constitution. State v. Tolbert, 98 Colo. 433, 56 P.2d 45 (1936).

The title of the underlying statutory act is sufficiently broad under § 21 of art. V, Colo. Const., to include the transportation of gasoline and distributors' licenses. State v. Tolbert, 98 Colo. 433, 56 P.2d 45 (1936).

39-27-102. Tax imposed on gasoline and special fuel - deposits - penalties.

(1) (a) (I) An excise tax is imposed and shall be collected on all gasoline or special fuel acquired, sold, offered for sale, or used in this state for any purpose whatsoever, but only one tax shall be paid upon the same gasoline or special fuel in this state. Except as otherwise provided in this subparagraph (I), no more than three tax-deferred transactions shall take place after the gasoline or special fuel has left the terminal of its origin, either within or outside of this state; except that, for purposes of counting the applicable transactions in order to collect the tax imposed by this subparagraph (I), counting shall begin when the gasoline or special fuel first enters this state, whether by truck or by rail. If more than three distributors acquire the gasoline or special fuel, the third distributor shall be liable for payment of the tax imposed. Nothing in this paragraph (a) shall preclude previous distributors from paying the tax. A distributor shall not be required to pay tax on gasoline or special fuel that is exempt pursuant to section 39-27-103 (2). The tax imposed shall be computed upon the total amount of gasoline or special fuel, measured in gallons, acquired by each distributor in this state and shall be paid in the manner provided in this section.

(II) (A) The excise tax imposed on gasoline by subparagraph (I) of this paragraph (a) shall be twenty cents per gallon or fraction thereof from August 1, 1989, through December 31, 1990, and twenty-two cents per gallon or fraction thereof for calendar years beginning on and after January 1, 1991.

(B) The excise tax imposed on special fuel by subparagraph (I) of this paragraph (a) shall be twenty and one-half cents per gallon or a fraction thereof for calendar years beginning on and after January 1, 1992.

(III) (Deleted by amendment, L. 2005, p. 863, § 1, effective July 1, 2005.)

(IV) (A) The excise tax imposed by subparagraph (I) of this paragraph (a) shall be six cents per gallon or fraction thereof on gasoline used as fuel for the propulsion of nonturbo-propeller or nonjet engine aircraft and shall be four cents per gallon or fraction thereof on gasoline used as fuel for the propulsion of turbo-propeller or jet engine aircraft.

(B) The provisions of this subparagraph (IV) shall not apply to domestic or foreign part 121 air carriers as defined in section 39-27-101 (19) or part 135 commuter air carriers as defined in section 39-27-101 (20) authorized to provide passenger and cargo air transportation services pursuant to the regulations of the office of the secretary of transportation and federal aviation administration of the United States department of transportation. The provisions of this subparagraph (IV) also shall not apply to direct air carriers as defined in section 39-27-101 (6), providing air transportation to authorized public charter operators pursuant to 14 CAR 380. For those air carriers that are certificated by the United States department of transportation for both part 121 air carrier operations and part 135 on-demand operations, the provisions of this sub-subparagraph (B) shall not apply to the air carrier's part 135 on-demand operations.

(C) Based upon reports submitted by wholesalers or distributors pursuant to the provisions of this article, the department of revenue shall compile a monthly report showing the amount of excise taxes collected on gasoline pursuant to the provisions of this subparagraph (IV). Such monthly report shall be transmitted to the division of aeronautics

created in section 43-10-103, C.R.S., for use by the division in distributing moneys in the aviation fund in accordance with section 43-10-110, C.R.S.

(V) In the case of a user, the tax imposed by this section shall be measured by the gallons of special fuel imported into this state or acquired without payment of the tax imposed by this section and used in the propulsion of a motor vehicle on the highways of this state.

(b) In the case of gasoline or special fuel shipped to a distributor from a terminal, the amount of gasoline or special fuel acquired shall be deemed to be the amount shipped from the terminal, as shown by the terminal manifest; except that an allowance of two percent of the total amount of gasoline or special fuel acquired during any calendar month, as shown by terminal manifests, shall be deducted by the licensed distributor to cover losses in transit and in unloading the gasoline or special fuel and costs of collection and payment to the state of the tax imposed by this section, out of which allowance the distributor shall make to each retailer an allowance of one percent of the amount of gasoline or special fuel delivered during each calendar month by the distributor to the retailer, as shown by delivery invoices signed by the retailer. The tax imposed by this section shall be exempted on each recorded and reported sale by a distributor to the United States, or any of its agencies, and to any town, city, county, city and county, special district, or school district when the sale involves a single delivery and the gasoline or special fuel is used exclusively by the governmental entity in performing its governmental functions and activities. The exemption shall apply solely to machines owned or operated by the United States or any of its agencies, by the state, or by any town, city, county, city and county, school district, or other political division of the state. Exemptions for persons conducting business for such governmental entities on a contract basis using an aircraft shall be based solely on the applicable operating certificate of the aircraft operator pursuant to sub-subparagraph (B) of subparagraph (IV) of paragraph (a) of this subsection (1). Any governmental entity referred to in this paragraph (b) shall obtain an exemption certificate from the executive director of the department of revenue. Upon receipt of an exemption certificate, such governmental entity may purchase gasoline or special fuel from a distributor without payment of the excise tax imposed pursuant to this part 1 if the gasoline or special fuel is used exclusively by the governmental entity in performing its governmental functions and activities.

(1.5) (Deleted by amendment, L. 2000, p. 1916, § 2, effective October 1, 2000.)

(2) (a) Every person who uses any gasoline or special fuel for propelling a motor vehicle on the public highways of this state or who is licensed to import any gasoline or special fuel into this state for use or sale in this state, upon which gasoline or special fuel a licensed distributor has not paid or is not liable to pay the tax imposed in this section, is deemed to be a distributor and is liable for and shall pay an excise tax at a rate established by paragraph (a) of subsection (1) of this section on all such gasoline or special fuel so used, or imported for use or sale, in this state. Such person shall pay such tax to the department of revenue, pursuant to section 39-27-105.3, on or before the twenty-sixth day of the calendar month following the month in which such gasoline or special fuel was used or imported and shall, at the time of payment, render to the department, on forms provided by it, an itemized statement, signed under the penalties of perjury in the second degree, as defined in section 18-8-503, C.R.S., of all such gasoline or special fuel so used or imported during such preceding calendar month. When such gasoline or special fuel is delivered from a terminal in a carload lot, the quantity thereof and the amount of tax thereon shall be computed in the same manner as in the case of a distributor.

(b) A person operating a passenger car into this state may bring into the state, for the operation of such passenger car, not more than the capacity for gasoline or special fuel in the ordinary fuel tank attached to such passenger car without being liable for payment of the tax on such gasoline or special fuel. Any person operating a motor truck or motor bus into this state, except those persons operating a qualified motor vehicle pursuant to motor fuel tax cooperative agreement entered into under part 3 of this article, may bring into this state, for the operation of such motor truck or motor bus, not more than the capacity for gasoline or special fuel in the ordinary fuel tank attached to such motor truck or motor bus without being liable for payment of the tax on such gasoline or special fuel. Any person operating an aircraft into this state, other than an aircraft operated by scheduled air carriers or

commuter airline operators, may bring into this state, for the operation of such aircraft, not more than the capacity for gasoline or special fuel in the ordinary fuel tank attached to such aircraft without being liable for payment of the tax on such gasoline or special fuel. In the event of a disagreement between the operator, driver, or owner of any vehicle, truck, or bus and any officer or inspector of this state regarding the capacity of the ordinary fuel tank of any vehicle traveling upon the highways, the operator, driver, or owner shall be required, at his or her own expense, to prove to the satisfaction of the officer or inspector the capacity of the ordinary fuel tank attached to such vehicle, and, in the event it exceeds that exempted by law, he or she shall be required to pay the tax on any additional gallonage then and there, securing a receipt from the officer or inspector with whom such disagreement occurred.

(c) and (d) Repealed.

(2.5) Except as otherwise provided in paragraph (b) of subsection (2) of this section, every person who imports gasoline or special fuel into this state for use or sale in this state without a valid importer, supplier, blender, or distributor license is liable for and shall pay an excise tax pursuant to paragraph (a) of subsection (1) of this section on all gasoline or special fuel such person imports for use or sale in this state. In addition to the excise tax, such person shall be subject to the civil penalties set forth in subsection (9) of this section. Immediately upon discovery of a violation of this subsection (2.5), the department of revenue and agents thereof may demand payment of such excise tax and all applicable fines associated with the unlicensed importation of gasoline or special fuel and may detain the shipment of gasoline or special fuel until such excise tax and fines are collected.

(3) to (8) Repealed.

(9) (a) Any person who imports or distributes gasoline or special fuel into this state without a license shall be subject to the following civil penalties:

(I) A five-thousand-dollar fine for the first violation;

(II) A ten-thousand-dollar fine for the second violation;

(III) A fifteen-thousand-dollar fine for a third or subsequent violation.

(b) The executive director of the department of revenue is authorized to waive, for good cause shown, any civil penalty assessed pursuant to this subsection (9).

(c) All moneys collected pursuant to this subsection (9) shall be credited to the highway users tax fund, created in section 43-4-201, C.R.S., and allocated and expended as specified in section 43-4-205 (5.5) (a), C.R.S.

(10) Nothing in this section shall be construed to prohibit the criminal prosecution of any person who commits a criminal offense in connection with or as a result of violating any provision of this part 1.

Source: L. 33: p. 718, § 2. L. 35: p. 905, § 2. CSA: C. 16, § 382. L. 53: p. 152, § 1. CRS 53: § 138-3-2. L. 63: p. 942, § 2. C.R.S. 1963: § 138-2-2. L. 64: p. 656, § 15. L. 65: pp. 1114-1118, §§ 2-5. L. 67: pp. 335, 336, 985, §§ 1, 2, 3, 1. L. 69: pp. 1140, 1141, §§ 1-5. L. 71: pp. 1257, 1258, §§ 1, 2. L. 72: p. 572, § 60. L. 73: pp. 1454, 1457, 1458, §§ 3, 4, 1, 2. L. 75: (4)(a) amended, p. 1517, § 1, effective January 1, 1976. L. 77: (2)(b) amended, p. 1838, § 1, effective July 1; (3)(a), (4)(a), and (5)(a) amended and (4)(b) repealed, pp. 1840, 1841, §§ 2, 3, effective January 1, 1978. L. 78: (1)(a) amended, p. 516, § 1, effective July 1. L. 79: (1)(a)(II) amended, p. 1330, § 3, effective May 8; (3)(a) and (6)(a) amended, p. 426, § 21, effective July 1; (1)(a)(I), (1)(a)(II), (1)(b), (2)(a), and (2)(b) amended and (2)(c), (2)(d), (3), (4), (5), (6), (7), and (8) repealed, pp. 1475, 1501, §§ 2, 29, effective January 1, 1980. L. 80: (1)(b) amended, p. 737, § 1, effective April 10. L. 81: (1)(a)(II) amended, p. 459, § 2, effective May 18; (1)(a) and (2)(a) amended, p. 1893, § 1, effective June 19. L. 82: (1)(a)(III) amended, p. 573, § 1, effective April 23. L. 83: (1)(a)(II) amended, p. 1539, § 1, effective July 1. L. 84: (1)(a)(III) amended, p. 1024, § 1, effective July 1. L. 85: (1)(a)(III) R&RE, p. 1285, § 1, effective June 6. L. 86: (1)(a)(II) amended, p. 1127, § 1, effective July 1. L. 88: (1)(b) amended, p. 1330, § 1, effective April 13; (2)(b) amended, p. 1336, § 2, effective April 14; (1)(a)(I) and (2)(b) amended and (1)(a)(IV) added, p. 1091, § 7, effective January 1, 1989. L. 89, 1st Ex. Sess.: (1)(a)(II) R&RE and (1)(b) amended, p. 51, §§ 1, 3, effective July 1; (1)(a)(II) R&RE and (1)(b) amended, p. 53, §§ 1, 2, effective August 1. L. 91: (1)(a)(IV)(C) added, p. 2397, § 22, effective July 1. L. 91, 1st Ex. Sess.: (1)(a)(IV)(C) added, p. 7, § 11, effective July 1.

L. 95: (1)(a)(I) and (1)(b) amended, p. 982, § 2, effective July 1. **L. 98:** (1)(a)(I), (1)(b), and (2)(a) amended and (1.5), (2.5), (9), and (10) added, p. 1023, § 2, effective July 1. **L. 2000:** (1)(a)(I) and (1.5) amended, p. 1916, § 2, effective October 1. **L. 2003:** (1)(a)(IV)(B) and (1)(b) amended, p. 1817, § 3, effective August 6. **L. 2005:** (9)(c) amended, p. 140, § 4, effective April 5; (1)(a)(I), (1)(a)(II), (1)(a)(III), (1)(b), (2)(a), (2)(b), (2.5), and IP(9)(a) amended and (1)(a)(V) added, p. 863, § 1, effective July 1.

Editor's note: (1) Amendments to subsection (2)(b) by Senate Bill 88-28 and House Bill 88-1250 were harmonized.

(2) The amendment to this section made by chapter 1, L. 91, First Extraordinary Session, p. 7, section 12, supersedes the amendment made by chapter 330, L. 91, p. 2397, section 22. Both acts contained a July 1, 1991, effective date. However the Governor did not sign the act enacted at the First Extraordinary Session until July 5. The act contained in chapter 1 from the First Extraordinary Session was subject to an interrogatory submitted to the Supreme Court by the Governor. The court held the act constitutional on its face. (See *In re House Bill 91S-1005*, 814 P.2d 875 (Colo. 1991).)

Cross references: For the legislative declaration contained in the 2003 act amending subsections (1)(a)(IV)(B) and (1)(b), see section 1 of chapter 278, Session Laws of Colorado 2003.

ANNOTATION

Subsection (1)(a)(III) held constitutional. *Archer Daniels Midland Co. v. State*, 690 P.2d 177 (Colo. 1984).

General assembly has the power to tax gasoline used in propelling motor vehicles on the streets of home-rule cities. *People v. City & County of Denver*, 90 Colo. 598, 10 P.2d 1106 (1932).

The excise tax provided in this section is a tax which in its discretion the general assembly, as the coordinate law-making branch of the government, has ample power to impose. *State v. Tolbert*, 98 Colo. 433, 56 P.2d 45 (1936).

Tax imposed deemed excise, not property, tax. The tax imposed on the various products of petroleum offered for sale or used for power purposes in propelling motor vehicles is an excise, and not a property, tax. *Altitude Oil Co. v. People*, 70 Colo. 452, 202 P. 180 (1921), appeal dismissed per curiam, 260 U.S. 693, 43 S. Ct. 11, 67 L. Ed. 467 (1922); *People v. City & County of Denver*, 84 Colo. 576, 272 P. 629 (1928).

Tax is not tax on gasoline, but on right to sell it, offer it for sale, or use it to propel motor vehicles. *People v. City & County of Denver*, 84 Colo. 576, 272 P. 629 (1928).

Tax is not only an excise tax but it is indirect tax, and taxes of this character, if not always, usually are levied upon and collected from a person other than the one who ultimately pays them. It is competent for the lawmakers to require payment in the first instance by the seller and for him, in turn, to pass it on to the user. *Miller v. People*, 76 Colo. 157, 230 P. 603, 39 A.L.R. 269 (1924).

Distributor receiving product prima facie liable for tax. The one who first receives the fuel product in this state which he sells or offers to sell to a consumer is prima facie liable for the amount of the tax on the number of gallons so

received. *Miller v. People*, 76 Colo. 157, 230 P. 603, 39 A.L.R. 269 (1924).

Although he neglects or intentionally refuses to collect from user. It would be a novel doctrine to announce that a dealer, who is made primarily liable for a tax, may escape payment merely because he neglects or intentionally refuses to collect it from the one ultimately liable, to whom he sells and from whom the law gives him the right to reimburse himself. *Miller v. People*, 76 Colo. 157, 230 P. 603 (1924).

No tax can be levied on gasoline sold to the United States. *People v. Texas Co.*, 85 Colo. 289, 275 P. 896 (1929).

This exemption applies to purchases of gasoline by the United States for sale in exchange service stations on military reservations in this state. *U.S. v. State of Colo.*, 666 F. Supp. 1479 (D. Colo. 1987) (decided prior to 1988 amendment to subsection (1)(b)).

Allowance for losses in transit and unloading not statutory "exemption". The two percent allowance to cover losses in unloading and transit granted in subsection (1)(b) is not an "exemption" within the meaning of the rule that if a taxpayer claims an exemption under a taxing statute the burden is on him to establish clearly his right to it. *Champlin Ref. Co. v. Cruse*, 115 Colo. 329, 173 P.2d 213 (1946).

Injunction maintainable to restrain use of motor fuel on which tax not paid. Although the violation of this section is made a crime by § 39-27-103, a suit for an injunction may be maintained by the state to restrain the use of motor fuel upon which the statutory tax has not been paid, as provided by this section. *State v. Tolbert*, 98 Colo. 433, 56 P.2d 45 (1936).

Distributor's eligibility for five-cent reduction in fuel tax for alcohol-blended fuels is to be determined on the basis of quantity of alcohol actually produced and sold for fuel, not on the

basis of production capacity. Western Refining v. Dept. of Rev., 767 P.2d 772 (Colo. App. 1988).

Applied in Armstrong v. Driscoll Constr. Co., 107 Colo. 218, 110 P.2d 651 (1941).

39-27-102.5. Exemptions on tax imposed - ex-tax purchases.

(1) (Deleted by amendment, L. 2005, p. 866, § 2, effective July 1, 2005.)

(1.5) Except as otherwise provided in paragraphs (a) and (b) of subsection (2) of this section, paragraph (b) of subsection (3) of this section, and section 39-27-102 (1) (b), indelible dye meeting federal regulations must be added to special fuel before or upon withdrawal at a terminal or refinery rack for that special fuel to be exempt from the excise tax imposed pursuant to this part 1. Such tax-exempt special fuel shall not be used for taxable purposes; except that dyed special fuel may be used for a taxable purpose to the extent that such use is allowed under federal law or regulations with such fuel being subject to the excise tax imposed pursuant to this part 1. For purposes of this subsection (1.5), "taxable purpose" means any use on which an excise tax on special fuel is imposed pursuant to this part 1. The terminal operator shall ensure that tax-exempt special fuel is dyed before it leaves the terminal. The seller shall give notice to the purchaser in accordance with federal regulations that the dyed special fuel is not legal for taxable use.

(2) (a) Dyed diesel fuel purchased to propel farm vehicles, when the same are being used on farms and ranches, farm tractors, and implements of husbandry only incidentally operated or moved on a highway, when operated off the public highways, and vehicles or construction equipment operated within the confines of highway construction projects when the same are actually being used in the construction of such highways shall be exempt from the excise tax imposed pursuant to this part 1. In accordance with section 39-27-104 (1) (d.5), dyed diesel fuel may be blended by a licensed distributor with biodiesel fuel after withdrawal at a terminal or refinery rack up to the maximum federally allowable blend. Such blended special fuel shall be exempt from the excise tax imposed pursuant to this part 1, so long as it is purchased for the purposes set forth in this paragraph (a). A person who purchases undyed special fuel for the purposes set forth in this paragraph (a) may, in accordance with section 39-27-103, apply to the department of revenue for a refund of the excise tax paid thereon.

(b) (I) (Deleted by amendment, L. 2005, p. 866, § 2, effective July 1, 2005.)

(II) Dyed diesel purchased by the state of Colorado, any of its agencies, any town, city, county, city and county, school district of this state, or any other political subdivision of this state shall be exempt from the excise tax imposed pursuant to this part 1 if the special fuel is used exclusively by the governmental entity in performing its governmental functions and activities. A person who purchases dyed diesel fuel for the purposes set forth in this subparagraph (II) may, in accordance with section 39-27-103, apply to the department of revenue for a refund of the excise tax paid thereon.

(III) Any state or local governmental entity referred to in subparagraph (II) of this paragraph (b) may obtain an exemption certificate from the executive director of the department of revenue pursuant to subsection (3) of this section. Upon receipt of an exemption certificate, such governmental entity may purchase from a distributor undyed special fuel without payment of the excise tax imposed pursuant to this part 1 if the special fuel is used exclusively by the governmental entity in performing its governmental functions and activities.

(c) Any person operating a vehicle other than a qualified motor vehicle pursuant to the motor fuel tax cooperative agreement entered into under part 3 of this article may bring into this state for the operation of such vehicle only the amount of special fuel that is in the ordinary fuel tank attached to such vehicle without being liable for the payment of the tax under this part 1.

(3) (a) The tax collected by the distributor pursuant to this section is deemed to have been received by the distributor at the time such fuel is acquired irrespective of when payment is received by the distributor for the amount of the invoice, including the tax, and the tax required to be collected by the distributor constitutes a debt owed by the distributor to this state.

(b) The executive director of the department of revenue shall issue an exemption certificate to a user of special fuel to purchase undyed special fuel from a distributor without payment of the tax if such user is exempt under the provisions of paragraph (b) of subsection (2) of this section.

(c) With each sale of special fuel made without payment of the tax pursuant to this subsection (3), the distributor shall secure evidence that the user has authorization from the executive director of the department of revenue to purchase special fuel ex-tax, together with the distributor's name and address and such other information as the executive director may require.

(4) (Deleted by amendment, L. 2000, p. 1932, § 15, effective October 1, 2000.)

(5) (a) The tax imposed by section 39-27-102 (1) (a) (II) (B) shall not apply to any motor vehicle that has been registered in this state, that is powered by liquefied petroleum gas or natural gas, and for which a valid decal has been acquired as provided in this subsection (5). The owners or operators of such motor vehicles shall, in lieu of the tax imposed under section 39-27-102 (1) (a) (II) (B), pay an annual license tax fee on each such vehicle in accordance with the following schedule of motor vehicle gross weights:

Gross Weight in Pounds	Annual License Tax Fee
(I) 1-10,000	\$ 70.00
(II) 10,001-16,000	100.00
(III) Over 16,000	125.00

(b) The executive director of the department of revenue shall annually, starting January 1 of each year commencing in 1984, collect or cause to be collected from owners or operators of the motor vehicles specified in paragraph (a) of this subsection (5) the annual license tax fee. Applications for such licenses shall be supplied by the department of revenue. In the case of a motor vehicle that is purchased or converted to liquefied petroleum gas or natural gas by January 1 of any year, a license shall be purchased for a fractional period of such year, and the amount of the license tax shall be reduced by one-twelfth for each complete month that shall have elapsed since the beginning of such year.

(c) Upon payment of the tax required by this subsection (5), the executive director of the department of revenue shall issue a decal, which shall be valid for the current calendar year and shall be attached to the upper right-hand corner of the front windshield on the motor vehicle for which it was issued.

(d) The identifying decal and license tax fee paid for each motor vehicle shall be transferable upon a change of ownership of the motor vehicle. Such transfer shall be accomplished in accordance with rules promulgated by the executive director of the department of revenue.

(e) It is unlawful for any person to operate a motor vehicle required to have a liquefied petroleum gas or natural gas decal upon the highways of this state without such decal unless such motor vehicle is titled outside Colorado and all Colorado purchases are taxed pursuant to section 39-27-102 (1) (a) (II) (B) or such vehicle is otherwise exempt from the provisions of this part 1.

(f) No person shall put, or cause to be put, liquefied petroleum gas or natural gas into the fuel tank of a motor vehicle required to have a liquefied petroleum gas or natural gas decal unless the motor vehicle has such decal attached to it or written or electronic evidence that a valid decal has been acquired for the motor vehicle and such evidence has been provided to such person or such person's employer. Sales of fuel placed in the fuel tank of a motor vehicle not displaying such decal or otherwise evidencing acquisition of a valid decal and for which the distributor is obligated to collect the tax specified by section 39-27-102 (1) (a) (II) (B) shall be recorded upon an invoice, which invoice shall include the date, the motor vehicle license number, the number of gallons or, in the case of natural gas, the energy equivalent in gallons placed in such fuel tank, and the tax due thereon.

(g) Any person violating any provision of this subsection (5) is subject to the penalty provisions of sections 39-27-114 and 39-27-120.

(h) Motor vehicles displaying a liquefied petroleum gas or natural gas decal are exempt from the licensing and reporting requirements stated in the remainder of this part 1.

(6) (a) The department of revenue shall promulgate rules allowing for payment of the annual license tax fee, if applicable, and acquisition of the decal as set forth in subsection (5) of this section by a user directly from a vendor or distributor of liquefied petroleum gas or natural gas.

(b) Such rules shall permit each vendor or distributor who participates in the program to return decals that are not issued by the vendor or distributor and remit the applicable annual license tax fees collected by the vendor or distributor not earlier than one hundred twenty days from the time decals are supplied to the vendor or distributor by the department of revenue.

(7) Motor vehicles that are owned or operated by a nonprofit transit agency that receives public funds and that are used exclusively in performing the agency's nonprofit functions and activities shall be exempt from the provisions of subsection (5) of this section and from the special fuel tax imposed by section 39-27-102 (1) (a) (II) (B) upon liquefied petroleum gas and natural gas. A person who purchases special fuel for the purposes set forth in this subsection (7) may, in accordance with section 39-27-103, apply to the department of revenue for a refund of the excise tax paid thereon.

(8) The department of revenue is authorized to promulgate reasonable rules, consistent with this part 1, concerning annual license tax fees collected and decals issued pursuant to subsections (5) and (6) of this section, including, but not limited to, reporting procedures, reporting forms, and the penalties described in sections 39-27-114 and 39-27-120.

Source: L. 2000: Entire section added with relocated provisions, p. 1932, § 15, effective October 1. L. 2002: (2)(a), (2)(b)(I), (2)(b)(II), and (7) amended, p. 552, § 1, effective May 24. L. 2005: (1), (1.5), (2)(b)(I), IP(5)(a), (5)(b), (5)(e), (5)(f), (6)(a), and (7) amended, p. 866, § 2, effective July 1. L. 2009: (1.5) and (2)(a) amended, (SB 09-098), ch. 195, p. 877, § 2, effective August 5.

Editor's note: This section is similar to former § 39-27-202 as it existed prior to 2000.

39-27-103. Refunds - penalties - checkoff. (1) A credit or refund shall be allowed for the tax paid or accrued on gasoline or special fuel that is lost or destroyed by fire, lightning, flood, windstorm, explosion, accident, or other cause beyond the control of the distributor or transporter of such gasoline or special fuel. This credit or refund shall be allowed only on gasoline or special fuel in quantities of one hundred gallons or more lost or destroyed at any one time. Any loss of gasoline or special fuel while in transit or while being loaded or unloaded shall be subject to credit or refund under this section. After any such loss or destruction, the distributor or transporter shall notify the executive director of the department of revenue within thirty days of such loss or destruction and, within the same deadline, shall file with the executive director proof sufficient to establish the loss or destruction as the executive director may require.

(1.5) A refund shall be allowed to a distributor for the tax paid on gasoline or special fuel pursuant to the provisions of this part 1 that was erroneously paid due to mistake of fact, law, or computation. A distributor who has paid any such tax may, within three years from the date of payment thereof, file with the department of revenue an application for refund of such tax so erroneously paid. Such application shall be on such forms as prescribed by the department of revenue.

(2) Refund shall be made or credit allowed for the tax paid on all gasoline or special fuel that is purchased and used exclusively, pursuant to section 39-27-102 (1) (b) by the United States or any of its agencies or by the state or by any town, city, county, or other political subdivision of the state, including specifically any school district therein, solely in any machines owned or operated by the United States or any of its agencies or by the state or by such town, city, county, school district, or other political subdivision of the state. Any other use or any resale for any other use shall be a violation of paragraph (c) of subsection (3) of this section.

(3) (a) (I) Any person who purchases gasoline or special fuel and pays the tax thereon at the time of such purchase shall be entitled to a refund by the controller, upon voucher certified by the department of revenue of the amount of such tax paid by him or her upon complying with the applicable conditions and provisions of this section, if the gasoline or special fuel is used for the purpose of:

- (A) Operating a stationary gas engine;
- (B) Operating a motor vehicle on or over fixed rails;
- (C) Operating a tractor, truck, or other farm implement or machine for agricultural purposes on a farm or ranch;
- (D) Operating a state-licensed agricultural applicator aircraft from a private landing facility used solely and exclusively for agricultural applications, to the extent of fifty percent of taxes payable pursuant to section 39-27-102 (1) (a) (IV);
- (E) Operating a motor boat;
- (F) Operating an aircraft by a part 121 air carrier as defined in section 39-27-101 (19), a part 135 commuter air carrier as defined in section 39-27-101 (20), or a direct air carrier as defined in section 39-27-101 (6) providing transportation to an authorized public charter operator pursuant to 14 CAR 380;
- (G) Cleaning or dyeing;
- (H) Any commercial use other than the operation of a motor vehicle upon the highways of this state and the operation of any aircraft other than the operation of aircraft specified in sub-paragraphs (D) and (F) of this subparagraph (I); or
- (I) Any other use that entitles a person to a refund under the provisions of this part 1 or federal law.

(II) Notwithstanding any other provision of this section, no person shall be entitled to a refund on purchases of gasoline or special fuel in quantities of less than twenty gallons.

(III) The executive director of the department of revenue shall calculate the amount of the refund allowed by subparagraph (I) of this paragraph (a) for gasoline or special fuel use in accordance with the industry-specific percentages of such fuel use exempted by said subparagraph (I) that can be justified by studies done by industries that use the fuel for such exempt purposes, studies done by other states for refunds of tax imposed on the fuel used for such exempt purposes, or studies done by the department about the historical fuel usage for such exempt purposes. The executive director shall set such percentages by rule promulgated in accordance with article 4 of title 24, C.R.S.

(a.1) Repealed.

(a.3) (I) Any person who purchases or uses gasoline for the propulsion of an aircraft shall be entitled to a refund by the controller if:

(A) The use of such gasoline in such aircraft is subject to the excise tax levied pursuant to section 39-27-102 (1) (a) (IV) (A); and

(B) The excise tax actually paid was the excise tax levied pursuant to section 39-27-102 (1) (a) (II).

(II) The amount of such refund shall be the difference between the amount actually paid pursuant to section 39-27-102 (1) (a) (II) and the amount that should have been paid pursuant to section 39-27-102 (1) (a) (IV) as certified by the department of revenue.

(b) All applicants claiming a refund under the provisions of this section shall obtain a refund permit from the department of revenue by application therefor on such forms as it prescribes. Such permits shall be obtained before or at the time the first application for refund is made. The application shall be made under oath and shall contain, among other things, the name, address, and occupation of the applicant, and the nature of the business, and a sufficient description of the machines and equipment in which the gasoline or special fuel is to be used for which a refund may be claimed. Upon approval of the application, the department of revenue shall issue to the applicant a refund permit number, and refund claim forms with the approved exemption percentage to calculate the amount of the refund allowed. The department shall make additional copies of the application for refund forms available to dealers. It is the duty of the department of revenue to keep a record for twenty-four months of all permits issued and cumulative records of the amount of refund claimed and paid thereon.

(c) Refund permits shall be cancelled by the department of revenue if no claim is filed by the permit holder for a period of twenty-four months. If any person makes any false statement in an application for a permit or upon any claim for refund or submits with any claim for refund an invoice that does not represent a bona fide purchase of gasoline or special fuel at the time and place and in the quantity indicated on the invoice, or if any dealer or other person prepares an invoice that does not represent a bona fide sale of gasoline or special fuel at the time and place and in the quantity indicated in the invoice, or if any person uses gasoline or special fuel on which refunds are claimed in any motor vehicle on the public highways of this state, except as provided in subsection (2) of this section, said person or dealer is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment. In addition, the executive director shall forthwith cancel the permit of such person, and such person shall not be issued a new permit within one year after such cancellation.

(d) Application for a refund under this section shall be made within twelve months after the date of purchase of the gasoline or special fuel but not more than once each calendar quarter. Such application shall be made on forms prescribed and furnished by the executive director, which shall contain such information as the executive director may deem necessary. At the time of making each sale and delivery of gasoline or special fuel upon which a refund of tax may be claimed, the dealer shall prepare an invoice, in duplicate, in a form approved by the executive director and containing such information as the executive director may deem necessary and carrying a serial number that shall not be repeated through any one calendar year. No additional invoices covering the same sale and delivery of gasoline or special fuel shall be issued by the dealer. The original copy of such invoice shall be delivered to the purchaser of the gasoline or special fuel, and, upon payment in full of such invoice, the dealer shall enter thereon the dealer's full name and a notation showing payment thereof. With respect to invoices covering the sale and delivery of gasoline or special fuel to the state or those political subdivisions of the state specified in subsection (2) of this section, it shall not be necessary for the dealer to enter the dealer's name and the notation showing payment thereof. Upon proper application, refund shall be made directly to such political subdivisions upon presentation of the completed refund claim form. Original invoices together with a certification of the date and number of the warrant by which such invoices were paid shall be retained by such political subdivisions for a period of twenty-four months. The duplicate copy of the invoice shall be retained by the dealer for a period of twenty-four months at the place of business where issued, and such duplicate invoices and other records of the dealer shall be available for examination by the executive director or the executive director's representatives. The executive director shall make demand for repayment of any refund of tax that has been illegally or erroneously made to any person, and the executive director is authorized to request the attorney general or any district attorney of the state to institute a suit for collection of any money illegally or erroneously refunded to any person.

(e) No refund shall be claimed by or allowed to any person on account of any gasoline or special fuel carried from this state in the ordinary fuel tank of a motor vehicle or aircraft. The application for a refund shall be made by the same person who purchased the gasoline or special fuel and paid the tax thereon as shown in the invoice of the seller thereof. The right of any person to a refund under this part 1 shall not be assignable. No refund of the gasoline or special fuel tax shall be claimed by or allowed to any person on any gasoline or special fuel used for propelling motor vehicles operated in whole or in part during the calendar year upon public highways of the state or upon the streets of any city or town in the state, except as otherwise provided in this subsection (3) or subsection (2) of this section.

(f) (Deleted by amendment, L. 2002, p. 553, § 2, effective May 24, 2002.)

(4) Any applicant for refund under the provisions of this section who willfully makes any false statement in connection with an application for a permit or an application for a refund of any taxes, or who uses the gasoline or special fuel other than as stated in the permit and application, shall be punished as provided by section 39-21-118, and by suspension or revocation of his or her permit or license. These penalties shall be in addition

to any other penalty imposed by this part 1. If any applicant for refund under the provisions of this section makes any false statement on any application for permit or credit for refund, or submits any invoices on which erasures, changes, alterations, or additions have been made, or that are otherwise incorrect, the executive director shall cancel all or part of any pending claim for refund of such applicant and shall also deduct from any subsequent claims an amount equal to one hundred percent of the amount claimed on any altered or incorrect invoice.

(5) If any person is convicted under the provisions of this section, such conviction shall be prima facie evidence that all refunds received by such person during the current year were obtained unlawfully, and the executive director is empowered to bring appropriate action for recovery of such refunds. A brief summary statement of the above mentioned penalties shall be printed on each form of permit and application for refund.

(6) Repealed.

Source: L. 33: p. 720, § 3. CSA: C. 16, § 383. L. 43: p. 192, § 1. L. 51: p. 190, §§ 1, 2. L. 53: p. 157, § 2. CRS 53: § 138-3-3. L. 55: pp. 912, 913, §§ 1, 1. L. 59: p. 789, § 1. L. 63: pp. 943, 944, §§ 3, 4. C.R.S. 1963: § 138-2-3. L. 64: p. 812, § 1. L. 67: pp. 337, 495, §§ 4, 1. L. 79: (3)(a.1) added, p. 1330, § 4, effective May 8; (3)(d) amended, p. 1503, § 1, effective July 1; (1), (2), (3), and (4) amended and (6) repealed, pp. 1477, 1501, §§ 3, 29, effective January 1, 1980. L. 85: (4) amended, p. 1259, § 16, effective January 1, 1986. L. 87: (1.5) added, p. 1464, § 1, effective May 8. L. 88: (2) amended, p. 1331, § 2, effective April 13; (3)(a) and (3)(e) amended and (3)(a.3) added, p. 1092, § 8, effective January 1, 1989. L. 94: (3)(a.1) repealed, p. 1646, § 83, effective May 31. L. 97: (3)(d) amended, p. 55, § 1, effective July 1. L. 2002: (1), (1.5), (2), (3)(a), (3)(b), (3)(c), (3)(d), (3)(e), (3)(f), and (4) amended, p. 553, § 2, effective May 24. L. 2003: (3)(a)(I)(F) and (3)(a)(I)(H) amended, p. 1818, § 4, effective August 6. L. 2005: (2) amended, p. 869, § 3, effective July 1. L. 2012: (1) amended, (HB 12-1178), ch. 79, p. 261, § 1, effective September 1.

Editor's note: Section 2 of chapter 79, Session Laws of Colorado 2012, provides that the act amending subsection (1) applies to gasoline or special fuel that is lost or destroyed on or after September 1, 2012.

Cross references: For the legislative declaration contained in the 2003 act amending subsections (3)(a)(I)(F) and (3)(a)(I)(H), see section 1 of chapter 278, Session Laws of Colorado 2003.

ANNOTATION

Right to a refund rests solely on this section, which does not authorize any excuse for a delay in filing the application therefor. *Armstrong v. Driscoll Constr. Co.*, 107 Colo. 218, 110 P.2d 651 (1941).

Procedure to obtain refund to be strictly followed. Refunds of the tax imposed by the preceding section are a matter of grace, and the procedure outlined by this section to obtain the same must be strictly followed. *Armstrong v.*

Driscoll Constr. Co., 107 Colo. 218, 110 P.2d 651 (1941).

Section's time limitation undoubtedly is legislative attempt to prevent filing of stale claims and other corrupt practices that so often materialize when state governmental agencies are authorized to make refunds. *Armstrong v. Driscoll Constr. Co.*, 107 Colo. 218, 110 P.2d 651 (1941).

39-27-103.5. Refunds of the tax paid on special fuel. (Repealed)

Source: L. 2000: Entire section added with relocated provisions, p. 1932, § 15, effective October 1; (1)(a) amended, p. 89, § 1, effective July 1. L. 2002: Entire section repealed, p. 556, § 3, effective May 24.

Editor's note: This section was similar to former § 39-27-203 as it existed prior to 2000.

39-27-104. License and deposit - exception. (1) (a) It is unlawful for any person to act as a distributor, supplier, importer, exporter, carrier, or blender of gasoline or special fuel

in this state without being licensed as such. Any person who acts as a distributor, supplier, importer, exporter, carrier, or blender of gasoline or special fuel within this state without being licensed as such is guilty of a misdemeanor. Each day of operation without a license shall be considered a separate offense. Such person shall also be subject to the civil penalties imposed pursuant to section 39-27-105 (5).

(b) Each applicant for the gasoline or special fuel distributor, supplier, importer, exporter, carrier, or blender license required by this section shall file with the executive director of the department of revenue an application in such form and manner as the executive director shall prescribe, stating the name and address of the applicant and such other information as may be required by this section or by the executive director. The application shall include a statement that such application is signed under oath and under the penalty of perjury in the second degree, as defined in section 18-8-503, C.R.S. An applicant for a license to export gasoline or special fuel from this state shall provide verification as required by the executive director that the applicant has an appropriate license valid in any state into which the gasoline will be exported. Each application for a gasoline or special fuel distributor, supplier, importer, exporter, carrier, or blender license shall be accompanied by a ten-dollar filing fee.

(c) The executive director of the department of revenue shall issue a license to an applicant if the application for a gasoline or special fuel distributor, supplier, importer, exporter, carrier, or blender license is in proper form, has been accepted for filing, and meets the other conditions and requirements of this section. The license shall be valid until surrendered, suspended, or revoked.

(d) A person who engages in the business of blending or compounding any products to make gasoline or special fuel thereof shall obtain a blender license and set forth in his or her application the kind and general characteristics of the products to be blended, the place where such blending is done, the purpose of such blending, and the intended disposition of such blended products and any other information as the executive director of the department of revenue deems necessary or advisable for the enforcement of this part 1.

(d.5) No person shall blend exempt dyed diesel fuel with biodiesel fuel after withdrawal at a terminal rack or refinery rack unless such person is a licensed blender in accordance with paragraph (d) of this subsection (1) who has a valid federal blending permit. Any person who violates the provisions of this paragraph (d.5) or the reporting or other requirements of this section relating to such blending or who misrepresents the amount of biodiesel fuel that is blended with dyed diesel fuel shall be subject to the following civil penalties:

(I) A five-thousand-dollar fine for the first violation;

(II) A ten-thousand-dollar fine for the second or subsequent violation; and

(III) In accordance with rules promulgated pursuant to the "State Administrative Procedure Act", article 4 of title 24, C.R.S., revocation of any license issued in accordance with the provisions of this section for the third violation.

(e) When any person ceases to be a distributor, supplier, importer, exporter, carrier, or blender of gasoline or special fuel by reason of discontinuance, sale, or transfer of such person's business at any location, such person shall notify the executive director of the department of revenue in writing at the time the discontinuance, sale, or transfer takes effect. The notice shall state the date of discontinuance and, in the event of sale or transfer, the name and address of the purchaser or transferee. All taxes, penalties, and interest not yet due and payable under the provisions of this part 1 shall, notwithstanding any other provisions of this part 1, become due and payable concurrently with the discontinuance, sale, or transfer; and the distributor shall make a report and pay all taxes, penalties, and interest and shall surrender to the executive director of the department of revenue the gasoline distributor, supplier, importer, exporter, carrier, or blender license together with all duplicates issued to him or her.

(f) The gasoline or special fuel distributor, supplier, importer, exporter, carrier, or blender license issued under the provisions of this section shall be conspicuously displayed in the established place of business of the licensee. A licensee shall obtain a duplicate license for each established branch office or location, which shall be displayed in a like

manner as the original license. Each such duplicate license shall be issued by the executive director of the department of revenue upon payment of a five-dollar fee.

(g) (I) No person shall export gasoline or special fuel out of this state without a valid license pursuant to this section. Any person who violates the reporting requirements of this part 1, exports gasoline or special fuel out of this state without a valid license, or imports gasoline or special fuel into this state without a license shall be subject to the following civil penalties:

- (A) A five-thousand-dollar fine for the first violation;
- (B) A ten-thousand-dollar fine for the second violation;
- (C) A fifteen-thousand-dollar fine for a third or subsequent violation.

(II) The executive director of the department of revenue is authorized to waive, for good cause shown, any civil penalty assessed pursuant to this paragraph (g).

(III) All moneys collected pursuant to this paragraph (g) shall be credited to the highway users tax fund, created in section 43-4-201, C.R.S., and allocated and expended as specified in section 43-4-205 (5.5) (a), C.R.S.

(IV) Nothing in this paragraph (g) shall be construed to prohibit the criminal prosecution of any person who commits a criminal offense in connection with or as a result of violating any provision of this part 1.

(V) Immediately upon discovery of a violation of this paragraph (g), the department of revenue and agents thereof:

(A) May require payment of the excise tax imposed pursuant to section 39-27-102 (1) (a) and all applicable civil penalties imposed pursuant to this paragraph (g) from any person who violates the provisions of this paragraph (g); and

(B) May detain the shipment of gasoline or special fuel until payment is collected.

(h) The executive director of the department of revenue may refuse to issue a gasoline or special fuel distributor, supplier, importer, exporter, carrier, or blender license if the executive director finds, after affording the applicant due notice and an opportunity to be heard, that the application:

(I) Was filed by any person whose license has previously been suspended or revoked for cause by the executive director of the department of revenue;

(II) Contains any misrepresentation, misstatement, or omission of material information required by the application;

(III) Was filed by some person other than the real person in interest whose license has been previously suspended or revoked for cause by the executive director of the department of revenue;

(IV) Was filed by any person who is or has been delinquent in the payment of any fee, tax, penalty, or other amount due to the department of revenue for more than two taxable periods; or

(V) Was submitted by a person who the executive director of the department of revenue determines is unable or unwilling to perform the duties and responsibilities of a licensed gasoline or special fuel distributor, supplier, importer, exporter, carrier, or blender, as applicable, based upon evidence furnished to him or her.

(2) (a) (I) No license to act as a distributor, refiner, or terminal operator of gasoline or special fuel shall be issued until the applicant therefor has deposited with the department of revenue evidence of a savings account, deposit, or certificate of deposit meeting the requirements of section 11-35-101, C.R.S., or a surety bond or a negotiable certificate of deposit issued by a commercial bank doing business in this state acceptable to the executive director of the department of revenue. When such deposit is a surety bond, such bond shall be in the sum of approximately three times the monthly tax liability estimated by the executive director to become due by the licensee; except that the amount of the surety bond shall never be less than twenty-five thousand dollars nor more than two hundred thousand dollars. If the deposit is a surety bond, it shall also be conditioned upon compliance by the distributor or refiner with all provisions of this part 1 and payment of all taxes and penalties to become due and payable thereunder; if it is a negotiable certificate of deposit, it shall be subject to forfeiture upon failure of the distributor or refiner to comply with said provisions or to pay all said taxes and penalties. Upon approval by the executive director of the application, a license to act as a distributor or refiner shall be issued to the applicant.

(II) The total amount of bond required of a distributor shall be fixed by the executive director of the department of revenue and may be increased or decreased by such director at any time, subject to the limitations imposed by this subsection (2).

(b) If at any time after issuance of the license the executive director of the department of revenue finds that the licensee is acquiring gasoline or special fuel in a quantity that makes the licensee liable for payment of excise tax for the preceding and current month in an amount greater than the amount of the deposit, the executive director shall, by written notice to the licensee, demand an additional surety bond or negotiable certificate of deposit to be deposited in an amount determined necessary to secure payment of a greater amount of taxes, but the aggregate amount of deposit shall in no event exceed two hundred thousand dollars. If the licensee fails or refuses within ten days after receipt of the written notice and demand to deposit an additional surety bond or negotiable certificate of deposit in the amount determined, the executive director may by written notice suspend or revoke the license held by the licensee. The requirements of this section relative to making a deposit shall apply only to distributors who are liable to the state for payment of the tax imposed by section 39-27-102.

(c) If the surety upon any surety bond so elects, said surety bond may be conditionally cancelled by the filing by said surety with the licensee and the executive director of the department of revenue of written notices of such conditional cancellation, but said surety shall not be discharged from any liability already accrued or that may accrue under said bond before the expiration of sixty days after the filing of said notices; if the licensee fails or refuses within sixty days after receiving said notice to deposit a new surety bond or a negotiable certificate of deposit acceptable to the executive director, then such license shall be revoked and cancelled.

(d) When a new surety bond or a negotiable certificate of deposit is deposited by a licensee, the executive director of the department of revenue shall surrender the old surety bond as soon as such director shall be satisfied that all liability thereunder has been fully discharged. When the liability upon a surety bond deposited by a licensee is discharged or reduced, whether by judgment rendered, payment made, or otherwise, or when a surety bond deposited by a licensee becomes insufficient by reason of the insolvency of the surety, or when for any other cause such surety bond is found to be insufficient, the executive director shall require the licensee to deposit a new surety bond or a negotiable certificate of deposit, in default of which the executive director may revoke and cancel said license. The validity of any surety bond and the liability of the surety thereon shall not be affected by the revocation of a license, or by partial recovery upon said surety bond, or by the deposit of a new surety bond or a negotiable certificate of deposit, but all such surety bonds shall continue in force and effect until surrendered by the executive director.

(e) Any surety on a bond furnished by a distributor pursuant to this subsection (2), upon written request to the executive director of the department of revenue, shall be discharged from any liability to this state accruing on the bond after expiration of sixty days from the date of filing the request but not from liability already accrued or accruing before the expiration of the sixty-day period. The executive director, upon receipt of such a request, shall promptly notify the distributor who furnished the bond in question and, unless such distributor, prior to the expiration of the sixty-day period, files a new bond satisfactory to the executive director, the executive director shall forthwith revoke such distributor's license.

(2.1) (a) No person, unless qualified as a distributor or exempt from payment of the special fuel tax imposed by this part 1, shall be issued authorization to purchase special fuel ex-tax from a distributor for use as the propulsion source for a motor vehicle that is operated upon the highways of this state, as provided in section 39-27-102.5 (3), until such person has filed a surety bond with the executive director of the department of revenue. The terms and conditions of such surety bond shall be the same as those provided under subsection (2) of this section for the bonding of distributors; except that the amount of such bond shall never be less than one hundred dollars nor more than fifty thousand dollars. The executive director may accept cash or certificates of deposits in lieu of surety meeting the requirements of section 11-35-101, C.R.S., or an irrevocable letter of credit meeting the requirements of section 11-35-101.5, C.R.S.

(b) Any person who fails or refuses to furnish additional bond or file a new bond upon the request of the executive director of the department of revenue or who has authorization to purchase special fuel ex-tax from a distributor revoked by the executive director and who continues to use such authorization is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of fifty dollars for each such offense.

(c) If an examination of the financial responsibility of a person who has been issued authorization to purchase special fuel ex-tax from a distributor indicates that a financial guarantee is necessary to guarantee payment of the tax, such person may be required to deposit a surety bond. The terms and conditions of such surety bond shall be the same as those provided in subsection (2) of this section for the bonding of distributors; except that the amount of such bond shall never be less than one hundred dollars nor more than fifty thousand dollars. In lieu of a surety bond, the executive director of the department of revenue may accept cash or certificates of deposit meeting the requirements of section 11-35-101, C.R.S., or an irrevocable letter of credit meeting the requirements of section 11-35-101.5, C.R.S.

(2.2) (a) The executive director of the department of revenue, in accordance with rules promulgated pursuant to the "State Administrative Procedure Act", article 4 of title 24, C.R.S., may revoke or suspend the license of any licensee who:

- (I) Fails to timely file any report required under this part 1 or files a false report;
- (II) Fails to pay the tax imposed pursuant to this part 1 together with any applicable penalty and interest;
- (III) Fails to pay any civil penalty assessed pursuant to this part 1;
- (IV) Is convicted of any criminal offense related to a violation of the provisions of this part 1;
- (V) Abuses the privileges for which the license was issued;
- (VI) Fails to produce records requested or otherwise fails to cooperate with the department in the administration of the provisions of this part 1.

(b) The executive director of the department of revenue may reinstate a license, terminate a suspension, or grant a new license to a person whose license has been revoked if no fact or condition exists that would constitute grounds for the executive director to refuse to reinstate, grant, or terminate a suspension of a license.

(2.5) (a) Notwithstanding the provisions of subsection (2) of this section, a distributor or refiner who has been licensed in this state for five consecutive years and who, during this period, has not been delinquent in the payment of taxes imposed under this part 1 shall be exempt from the requirement to file a bond or any other evidence of financial responsibility meeting the requirements of section 11-35-101, C.R.S.

(b) If any delinquency in the payment of taxes imposed under this part 1 subsequently occurs, the executive director may reinstate the requirement of a bond or any other evidence of financial responsibility meeting the requirements of section 11-35-101, C.R.S., as a condition of licensure.

(3) In addition to all other applicable penalties and fines set forth in this part 1, each day on which any person engages in the business of a distributor, supplier, importer, exporter, carrier, or blender within this state without a license as required by this part 1 shall constitute a separate offense, and for each such offense, such person commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

(4) Notwithstanding the amount specified for any fee in subsection (1) of this section, the executive director of the department of revenue, by rule or as otherwise provided by law, may reduce the amount of one or more of the fees if necessary pursuant to section 24-75-402 (3), C.R.S., to reduce the uncommitted reserves of the fund to which all or any portion of one or more of the fees is credited. After the uncommitted reserves of the fund are sufficiently reduced, the executive director, by rule or as otherwise provided by law, may increase the amount of one or more of the fees as provided in section 24-75-402 (4), C.R.S.

Source: L. 33: p. 722, § 4. CSA: C. 16, § 384. L. 51: p. 186, § 1. CRS 53: § 138-3-4. C.R.S. 1963: § 138-2-4. L. 73: p. 1455, § 5. L. 77: (3) amended, p. 887, § 74, effective July 1, 1979. L. 79: (2)(a) amended, p. 427, § 22, effective July 1; (1)(a), (1)(c), (2)(a), (2)(b), and (3) amended, p. 1480, § 4, January 1, 1980. L. 87: (2.5) added,

p. 486, § 32, effective July 1. **L. 89:** (3) amended, p. 853, § 146, effective July 1. **L. 95:** (1)(a) and (2)(b) amended, p. 983, § 3, effective July 1. **L. 98:** (1) and (3) amended and (2.2) added, p. 1026, § 3, effective July 1. **L. 2000:** (1) and (2) amended and (2.1) and (4) added with relocations, p. 1917, § 3, effective October 1. **L. 2002:** (3) amended, p. 1558, § 354, effective October 1. **L. 2005:** (1)(g)(III) amended, p. 141, § 5, effective April 5; (1)(g)(V)(A) amended, p. 869, § 4, effective July 1. **L. 2009:** (1)(d.5) added, (SB 09-098), ch. 195, p. 878, § 3, effective August 5.

Editor's note: (1) The effective date for amendments made to this section by chapter 216, L. 77, was changed from July 1, 1978, to April 1, 1979, by chapter 1, First Extraordinary Session, L. 78, and was subsequently changed to July 1, 1979, by chapter 157, § 23, L. 79. See *People v. McKenna*, 199 Colo. 452, 611 P.2d 574 (1980).

(2) Subsections (2)(a)(II), (2)(e), (2.1), (2.1)(c), and (4) are similar to provisions of former § 39-27-204 as they existed prior to 2000.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (3), see section 1 of chapter 318, Session Laws of Colorado 2002.

39-27-105. Collection of tax on gasoline and special fuel. (1) In addition to the reporting requirements set forth in subsection (1.5) of this section, every distributor, supplier, carrier, exporter, importer, blender, refiner, or terminal operator of gasoline or special fuel on or before the twenty-sixth day of each calendar month shall file with the executive director of the department of revenue, on forms prescribed and furnished by the department, an itemized statement made under penalty of perjury in the second degree, showing the following:

(a) The number of gallons of gasoline or special fuel acquired by the distributor in this state from any source whatsoever during the preceding calendar month;

(b) The quantity of the different kinds of gasoline or special fuel so acquired;

(c) The amount of gasoline or special fuel exported from this state, with the date of shipment, the car number and initials, and the number of invoiced gallons of gasoline or special fuel contained in each tank car if exported by rail, and the name of the owner and the make and license number of the tank truck or tank wagon if such transportation is used, and the name of the person to whom such exported gasoline or special fuel was sold, the point of shipment, and the point of delivery;

(d) The date of acquisition of each shipment of gasoline or special fuel acquired by the distributor, the name of the person from whom purchased or acquired, the point of origin and point of destination of each shipment, the quantity in gallons of each of said purchases or shipments, the name of the carrier, the number of each tank car, its initial, and the number of invoiced gallons contained in each tank car if shipped by rail, and the name of the owner and the make, license number, and capacity in gallons of the tank truck or tank wagon if such transportation was used;

(e) Further information pertaining to the acquisition of gasoline or special fuel and its disposition as the executive director of the department of revenue may reasonably require. In the case of a distributor duly licensed as a blender of gasoline or special fuel, the report shall show the amount and character of the unblended products and the blended products on hand on the last day of the preceding calendar month, the amount of unblended products acquired and the amount of products blended during said calendar month, and any other information relative to the disposition of the blended products as the executive director may deem necessary or advisable for the correct determination of the amount of excise tax applicable to gasoline or special fuel acquired, used, or offered for sale by the distributor.

(f) The information required for reporting acquisition or disposition of gasoline or special fuel pursuant to this article shall be submitted electronically in the manner prescribed by the department of revenue by rule. The department, in consultation with distributors, shall promulgate rules regarding filing of information that includes, but is not limited to, the data elements, the format of the data elements, and the method and medium of transmission to the department.

(1.3) (a) (Deleted by amendment, L. 2005, p. 869, § 5, effective July 1, 2005.)

(b) The executive director of the department of revenue, if said executive director deems it necessary in order to ensure payment of the tax imposed by this part 1 or to facilitate the administration of this part 1, may require a report of a distributor and payment of the tax due by the distributor to be made for other than, or in addition to, the monthly period. When such option is authorized, the amount of surety bond required by section 39-27-104 (2) may be adjusted by the executive director proportionately with the change in liability.

(c) Distributors may aggregate figures stated in the reports required by this part 1 for liquefied petroleum gas and natural gas for all service stations or other facilities that dispense liquefied petroleum gas or natural gas for sale to users and that are owned or operated by the same distributor.

(d) Distributors may aggregate figures stated in the reports required by this part 1 for liquefied petroleum gas and natural gas for sales of such fuels to a particular class or type of individual user or holder of the decals authorized by section 39-27-102.5 (5). Distributors of liquefied petroleum gas and natural gas shall not be required to separately report the amount of sales to individual users.

(e) Any inventory reporting requirements established pursuant to this subsection (1.3) shall not apply to distributors of natural gas whose service stations or other facilities receive special fuel for sale through a pipeline and have a maximum special fuel storage capacity of less than one-thousand-gallon equivalents at the site where sales are made to users.

(1.5) On or before the twenty-sixth day of each calendar month, every licensee shall file with the executive director of the department of revenue, on forms prescribed and furnished by the department, a report made under penalty of perjury in the second degree specifying any information that the executive director of the department of revenue shall require. The executive director shall consult with persons in the gasoline or special fuel industry to determine such reporting requirements and promulgate said requirements by rule in accordance with the "State Administrative Procedure Act", article 4 of title 24, C.R.S.

(2) It is the duty of every distributor of gasoline or special fuel to compute the amount of tax payable on all gasoline or special fuel acquired during the preceding calendar month at the rate of tax per gallon imposed thereon in section 39-27-102 (1), and, in computing the amount of tax, the allowance of two percent provided for in section 39-27-102 (1) shall be taken into account. From the amount of tax so computed, the distributor of gasoline or special fuel shall deduct one-half of one percent to cover expenses of collection of the tax and bad debt losses and shall pay the remaining balance to the department of revenue at the time of filing the statement required to be filed by the provisions of this section. A penalty of thirty dollars or ten percent of the tax due, plus one-half of one percent per month from the date when due, not to exceed eighteen percent in the aggregate, whichever is greater, shall be imposed for failure to file any statement when due or pay the tax as provided in this section, in addition to any other penalties provided by this part 1.

(3) If any distributor of gasoline or special fuel fails or refuses to make and file the sworn statement and pay the tax due for any calendar month or if any distributor of gasoline or special fuel makes and files any incorrect or fraudulent statement or return for any calendar month as required by this part 1, the executive director of the department of revenue, upon such information as is available in his or her office or elsewhere, shall determine the amount of gasoline or special fuel taxes due from said distributor and shall add to said amount a penalty of thirty percent thereof for failure to file such report or for filing such false or fraudulent report and collect the amount of said tax and penalty plus interest on the whole amount due from said distributor at the rate imposed under section 39-21-110.5 from the date due until paid. The executive director may waive, for good cause shown, any penalty assessed as provided in this article and article 21 of this title.

(4) (a) (I) Every person who has obtained a passenger-mile tax permit pursuant to section 42-3-309, C.R.S., where such permit relates to a motor vehicle that is powered by special fuel, shall, on or before the last day of the month following the end of the quarter, file with the executive director of the department of revenue a report stating the amount of special fuel subject to the tax imposed by this part 1 consumed by such person during the prior quarter and such other information relating to the use of special fuel for the propulsion of a motor vehicle on the highways of this state as the executive director may require. The

executive director, under rules and procedures established by said executive director, may exempt from the reporting requirement of this subsection (4) any motor vehicle used exclusively within this state. Failure to receive the authorized report form does not relieve such person from the obligation of submitting a report to the executive director setting forth all information required on the prescribed report form. The report shall contain or be accompanied by a written declaration that it is made under the penalties of perjury in the second degree, as defined in section 18-8-503, C.R.S.

(II) The tax due pursuant to subparagraph (I) of this paragraph (a) shall be computed by multiplying the rate per gallon as set forth in section 39-27-102 (1) (a) (II) (B) by the number of gallons of special fuel used in this state.

(b) From the tax due, an authorized user may claim credit for tax paid on purchases of special fuel from vendors within this state. Any credit in excess of the tax due from a user under this part 1 may be claimed on a consolidated report authorized under paragraph (c) of this subsection (4) as a credit against the taxes imposed under sections 42-3-304 to 42-3-306, C.R.S. Otherwise, such credit is refundable under the provisions of section 39-27-103 and such rules and procedures as the executive director of the department of revenue may adopt.

(c) The executive director of the department of revenue may authorize, under rules and procedures established by said executive director, the consolidation of the report required by this subsection (4) and the report required by section 42-3-308, C.R.S., into a single report.

(d) Notwithstanding any other provision of this section to the contrary, any owner or operator of a motor vehicle required to pay a special fuel tax imposed by the provisions of paragraph (a) of this subsection (4) may pay the tax and file the statement required by said paragraph (a) on a quarterly basis. The executive director of the department of revenue, under rules and procedures established by the executive director, may exempt from the reporting requirement of this subsection (4) any motor vehicle used exclusively within this state.

(5) (a) Except as provided in paragraph (a) of subsection (4) of this section and in section 39-27-102.5 (2) (c), every person who imports into this state special fuel within the fuel tank of a motor vehicle and who is not required to report special fuel usage under the provisions of subsection (4) of this section shall obtain from the port of entry, from the office of the department of revenue nearest the point of entry into this state, or from any officer of the Colorado state patrol a single trip permit that shall contain a description of the motor vehicle, a description of the points of travel within the state of Colorado, and such other information as the executive director of the department of revenue may require. At the time of issuance of such single trip permit, a tax will be computed and paid based on the consumption rate of four miles per gallon for special fuel consumed within Colorado at the special fuel tax rate provided by section 39-27-102.5. A fee of one dollar shall be paid for each single trip permit and the permit shall be valid for a period of seventy-two hours.

(b) (I) The holder of a single trip permit shall be entitled to a refund of any tax imposed by this part 1 paid to a vendor within this state if:

(A) The special fuel, upon which such tax is paid, is placed into the fuel tank of the motor vehicle described within the permit; and

(B) The sale and delivery of such special fuel is within the seventy-two-hour period for which the permit is valid.

(II) The refund allowed by this paragraph (b) shall be issued under the provisions of section 39-27-103 and such rules and procedures as the executive director of the department of revenue may adopt.

(c) Any person whose use of special fuel is for the propulsion of a privately operated automobile shall be exempt from the provisions of this subsection (5). A privately operated passenger automobile does not include a motor vehicle used for the transportation of persons for hire or for compensation or designed, used, or maintained primarily for the transportation of property. A motor vehicle exempt from the mileage taxes of article 3 of title 42, C.R.S., is deemed to be a privately operated passenger automobile for purposes of this subsection (5).

(d) Any person who violates this subsection (5) is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of seventy-five dollars, which shall be in addition to the civil penalties imposed by section 39-27-104 (1) (g).

(6) (a) Every person who imports special fuel into this state for use or sale in this state without a single trip permit or a valid importer's, supplier's, or distributor's license is liable for and shall pay an excise tax pursuant to section 39-27-102 (1) on all undyed special fuel such person imports for use or sale in this state.

(b) Immediately upon discovering a violation of this subsection (6), the department of revenue and agents thereof:

(I) May demand payment of such excise tax and all applicable fines associated with the unlicensed importation of special fuel, as set forth in this subsection (6); and

(II) May detain the shipment of special fuel until such excise tax and fines are collected.

(c) Any person who imports special fuel into this state without a valid license pursuant to section 39-27-104 shall be subject to the civil penalties set forth in section 39-27-104 (1) (g).

(7) (a) If any person other than a licensed distributor or supplier physically diverts to one or more destinations within the boundaries of this state all or any portion of a shipment of gasoline or special fuel that is claimed as an export on the bill of lading or other affidavit, such person shall report to the department of revenue the destinations within this state to which the diverted gasoline or special fuel shipment was delivered within one working day after such diversion. Such person shall be liable for payment of the excise tax established in this part 1 on the amount of gasoline or special fuel diverted to a destination within this state.

(b) Any licensed distributor or supplier who diverts gasoline or special fuel for use or sale within this state after claiming such shipment as an export shall report such diversion to the department of revenue within one working day after the diversion.

(c) Any person who violates the reporting requirements of this subsection (7) shall be subject to the civil penalties set forth in section 39-27-104 (1) (g).

(d) Immediately upon discovery of a violation of this section, the department of revenue and agents thereof may require payment of the excise tax and all applicable civil penalties from any person who violates the provisions of this section and may detain the shipment of special fuel until payment is collected.

(8) to (10) (Deleted by amendment, L. 2005, p. 869, § 5, effective July 1, 2005.)

(11) Distributors who sell natural gas exclusively to distributors, vendors, or other retailers of special fuels shall be exempt from the reporting and tax collection and remittance requirements of this section. This subsection (11) shall not apply to any distributor who sells natural gas to a user.

Source: L. 33: p. 726, § 5. CSA: C. 16, § 385. CRS 53: § 138-3-5. C.R.S. 1963: § 138-2-5. L. 67: p. 350, § 1. L. 69: p. 1142, § 6. L. 77: (2) amended, p. 1843, § 1, effective July 1. L. 79: Entire section amended, p. 1481, § 5, effective January 1, 1980. L. 81: (3) amended, p. 1867, § 14, effective July 8. L. 85: (2) and (3) amended, p. 1259, § 17, effective January 1, 1986. L. 95: IP(1), (1)(a), (1)(b), (1)(d), (1)(e) and (2) amended and (1)(f) added, p. 984, § 4, effective July 1. L. 98: IP(1) and (1)(e) amended and (1.5) added, p. 1030, § 4, effective July 1. L. 2000: IP(1), (1)(e), (1.5), (2), and (3) added and (1.3), (4), (5), (6), (7), (8), (9), (10), and (11) amended with relocations, p. 1922, § 4, effective October 1. L. 2002: (4)(b) and (5)(b)(II) amended, p. 557, § 4, effective May 24. L. 2005: (1), (1.3)(a), (1.3)(c), (1.3)(d), (1.5), (2), (3), (4)(a), (6)(a), (7)(a), (7)(b), (8), (9), (10) amended, p. 869, § 5, effective July 1; (4)(a), (4)(b), and (4)(c) amended, p. 1184, § 36, effective August 8.

Editor's note: (1) The provisions of this section are similar to several former provisions of § 39-27-205 as they existed prior to 2000. For a detailed comparison of this section, see House Bill 00-1479, L. 2000, p. 1922.

(2) Amendments to subsection (4)(a) by Senate Bill 05-222 and House Bill 05-1107 were harmonized.

ANNOTATION

State, not distributor, determines time and place of ascertaining tax. A distributor cannot usurp the prerogative of the state in determining the time or place of the ascertainment of the tax due or the payment thereof. *People v. Texas Co.*, 85 Colo. 289, 275 P. 896 (1929).

Exacting penalty for failure to pay tax valid. The exacting of a penalty for the failure to pay the gasoline tax is a valid exercise of the police power of the state. *People v. Texas Co.*, 85 Colo. 289, 275 P. 896 (1929).

Burden of proof in action for collection on distributor. In an action by the state to collect a gasoline tax, the dealer must show the quantity sold, and the burden is upon him to show how much, if any, of the product was sold for a nontaxable use. *Miller v. People*, 76 Colo. 157, 230 P. 603, 39 A.L.R. 269 (1924).

General statute of limitations does not apply to such actions for collection. *People v. Miller*, 90 Colo. 269, 8 P.2d 269 (1932).

39-27-105.3. Remittance of tax on gasoline and special fuel - mandatory electronic funds transfers. For any calendar month commencing on or after July 1, 2005, any distributor, supplier, carrier, exporter, importer, blender, refiner, licensee, or terminal operator shall use electronic funds transfers to remit all taxes required to be remitted to the executive director of the department of revenue. Such distributor, supplier, carrier, exporter, importer, blender, refiner, licensee, or terminal operator shall pay such taxes by electronic funds transfers to the department on or before the twenty-sixth day of each calendar month. The executive director may promulgate rules to effectively implement this section, but shall first consult with the state treasurer to ensure that any rules promulgated do not adversely affect the ability of the state treasurer to optimize gasoline and special fuel tax investment earnings. Such rules shall be promulgated in accordance with article 4 of title 24, C.R.S.

Source: L. 2005: Entire section added, p. 873, § 6, effective July 1.

39-27-105.5. Lien to secure payment of taxes - exemption - recovery. (1) (a) The state of Colorado and the department of revenue shall have a lien to secure the payment of the taxes, penalties, and interest imposed pursuant to this part 1 upon all the assets and property of the distributor owing such tax, including the stock in trade, business fixtures, and equipment owned or used by the distributor in the conduct of his business, as long as a delinquency in the payment of such tax continues. Such lien shall be prior to any lien of any kind whatsoever, including existing liens for taxes.

(b) Any distributor or person in possession shall provide a copy of any lease pertaining to the assets and property described in paragraph (a) of this subsection (1) to the department of revenue within ten days after seizure by the department of such assets and property. The department shall verify that such lease is bona fide and notify the owner that such lease has been received by the department. The department shall use its best efforts to notify the owner of the real or personal property which might be subject to the lien created in paragraph (a) of this subsection (1). The real or personal property of an owner who has made a bona fide lease to a distributor shall be exempt from the lien created in paragraph (a) of this subsection (1) if such property can reasonably be identified from the lease description or if the lessee is given an option to purchase in such lease and has not exercised such option to become the owner of the property leased. This exemption shall be effective from the date of the execution of the lease. Such exemption shall also apply if the lease is recorded with the county clerk and recorder of the county where the property is located or based or a memorandum of the lease is filed with the department of revenue on such forms as may be prescribed by said department after the execution of the lease at a cost for such filing of two dollars and fifty cents per document. Motor vehicles which are properly registered in this state, showing the lessor as owner thereof, shall be exempt from the lien created in paragraph (a) of this subsection (1); except that said lien shall apply to the extent that the lessee has an earned reserve, allowance for depreciation not to exceed fair market value, or similar interest which is or may be credited to the lessee. Where the lessor and lessee are blood relatives or relatives by law or have twenty-five percent or more common ownership, a lease between such lessee and such lessor shall not be considered as bona fide for the purposes of this section.

(2) If a distributor fails to comply with the provisions of section 39-27-105, the executive director of the department of revenue may seek to enforce collection of the unpaid taxes, penalties, and interest in accordance with the provisions of article 21 of this title.

Source: **L. 87:** Entire section added, p. 486, § 33, effective July 1. **L. 92:** (1)(b) amended, p. 2203, § 6, effective April 16. **L. 2000:** (2) amended, p. 1927, § 5, effective October 1. **L. 2004:** (2) amended, p. 1211, § 96, effective August 4.

39-27-106. Distributor trustee of tax. Every distributor who sells any gasoline or special fuel for any purpose that is subject to the tax imposed by this part 1 shall collect from the purchaser the amount of excise tax thereon, and any sums of money paid by the purchaser to the distributor as gasoline or special fuel taxes shall be and remain public money, the property of the state in the hands of such distributor, and such distributor shall hold the same in trust for the sole use and benefit of the state until paid to the executive director of the department of revenue as provided in this part 1. Any distributor who willfully fails or refuses upon demand to pay over to the executive director the moneys paid to the distributor as gasoline or special fuel taxes that are by this part 1 declared to be trust funds in the distributor's hands and the property of the state of Colorado or who fraudulently withholds, converts to such distributor's own use, or appropriates or otherwise uses such moneys or any part thereof belonging to the state shall be punished as provided by section 39-21-118.

Source: **L. 33:** p. 728, § 5. **CSA:** C. 16, § 385. **CRS 53:** § 138-3-6. **C.R.S. 1963:** § 138-2-6. **L. 79:** Entire section amended, p. 1482, § 6, effective January 1, 1980. **L. 85:** Entire section amended, p. 1260, § 18, effective January 1, 1986. **L. 2000:** Entire section amended, p. 1927, § 6, effective October 1.

ANNOTATION

Distributor who collects tax answerable to state for funds collected. A distributor of motor fuel who collects a state tax thereon under the provisions of this section is a trustee as to the funds collected and answerable to the state therefor until they are paid over to the proper officials. *Wade v. State*, 97 Colo. 52, 47 P.2d 412 (1935).

Distributor cannot question legality of tax provision. A distributor of motor fuel, who is neither benefited nor injured by the determination of the validity of a statute taxing the products distributed, is in no position to question the legality of the statute; that can only be done by one who first protests, and then pays, the tax. *Wade v. State*, 97 Colo. 52, 47 P.2d 412 (1935).

39-27-107. When users other than distributors must report. Except as otherwise provided in section 39-27-102 for persons that export gasoline, every person not a licensed distributor who uses any gasoline in this state or who has in his or her possession any gasoline, other than that contained in the ordinary fuel tank attached to a motor vehicle or aircraft, upon which a licensed distributor has not paid or is not liable for the tax imposed in this part 1 shall file a sworn statement with the executive director of the department of revenue on or before the twenty-fifth day of the calendar month on such form as the executive director prescribes and furnishes, showing the amount of gasoline so used and held, and shall pay to the executive director the tax imposed on all such gasoline.

Source: **L. 33:** p. 729, § 5. **CSA:** C. 16, § 385. **CRS 53:** § 138-3-7. **C.R.S. 1963:** § 138-2-7. **L. 79:** Entire section amended, p. 1483, § 7, effective January 1, 1980. **L. 88:** Entire section amended, p. 1093, § 9, effective January 1, 1989. **L. 98:** Entire section amended, p. 1030, § 5, effective July 1.

39-27-108. Penalty for failure to report or pay tax. Any person who willfully fails or refuses to make the report or payment of tax due to the executive director of the department of revenue as provided in sections 39-27-105 to 39-27-108, for which no penalty is expressly provided, and any person who willfully makes any false report or

statement as to the amount of gasoline or special fuel acquired, sold, or used or any false statement relative to the kind or character and the amount of the gasoline or special fuel received by such person and required to be reported, with intent to evade the payment of the tax imposed in this part 1 on gasoline or special fuel, shall be punished as provided by section 39-21-118. The making and filing of any false statement shall be deemed prima facie evidence of intent to evade the payment of tax imposed in this part 1 on gasoline or special fuel by that means.

Source: L. 33: p. 729, § 5. CSA: C. 16, § 385. CRS 53: § 138-3-8. C.R.S. 1963: § 138-2-8. L. 79: Entire section amended, p. 1483, § 8, effective January 10, 1980. L. 85: Entire section amended, p. 1260, § 19, effective January 1, 1986. L. 95: Entire section amended, p. 985, § 5, effective July 1. L. 2000: Entire section amended, p. 1928, § 7, effective October 1.

39-27-109. Reports by carriers. (Repealed)

Source: L. 33: p. 730, § 6. CSA: C. 16, § 386. L. 53: p. 160, § 3. CRS 53: § 138-3-11. C.R.S. 1963: § 138-2-11. L. 79: Entire section repealed, p. 1501, § 29, effective January 1, 1980.

39-27-109.7. Data collection services. In order to track the movement of gasoline or special fuel within this state and thereby facilitate and expedite the collection of excise taxes imposed pursuant to this part 1, the executive director of the department of revenue may enter into a contract with one or more private entities for the provision of a computer-based program to monitor and track the data that licensees are required to report to the department pursuant to this part 1. Such computer-based program shall be funded solely with moneys from the highway users tax fund; except that, for the state fiscal year 2009-10, up to thirty-seven thousand six hundred thirty dollars for the computer-based program to monitor and track exempt dyed diesel fuel that is blended with biodiesel fuel after withdrawal at a terminal rack or refinery rack pursuant to section 39-27-102.5 (2) (a) may be funded by moneys received by the governor's energy office created in section 24-38.5-101, C.R.S., as said office existed prior to July 1, 2012, from the United States department of energy.

Source: L. 98: Entire section added, p. 1031, § 6, effective July 1. L. 2000: Entire section amended, p. 1928, § 8, effective October 1. L. 2009: Entire section amended, (SB 09-098), ch. 195, p. 878, § 4, effective August 5. L. 2012: Entire section amended, (HB 12-1315), ch. 224, p. 978, § 44, effective July 1.

39-27-110. Inspection of records. (1) Every distributor of gasoline shall keep a true and complete record of all purchases, acquisitions, sales, and distribution of each kind of gasoline handled by the distributor, as to which a record of the total volume of sales and deliveries shall be kept for each calendar month. Every person carrying, transporting, importing, or delivering into or within this state gasoline shall keep true and correct records of shipments of gasoline for each calendar month. Every blender of gasoline shall keep true and accurate records of all blended gasoline on hand, acquired, sold, used, or otherwise disposed of. All the books, records, papers, receipts, invoices, and equipment of every distributor, carrier, or blender that pertain to the acquisition, sale, or shipment of gasoline shall be retained for a period of three years and shall be subject to inspection at any time during ordinary business hours by the executive director or representatives of the department of revenue. Any information gained by the executive director or the director's representatives by the investigation shall be confidential and any person divulging the information, except as such disclosure may be rendered necessary by law, shall be subject to penalties provided in this part 1.

(2) In order that the amount of taxable gasoline may be accurately determined by the department of revenue, every refiner or blender of gasoline in the state of Colorado shall maintain full and complete records of all purchases of whatever kind and of all crude runs,

still charges, pumping operations, distillation processes, blending operations, treating operations, transfers of stock, invoices, and any other records as are necessary to determine the correct gallonage, and such additional information as the department of revenue may from time to time require. Every refiner of gasoline shall keep a complete record of all sales made and copies of all refinery invoices and shall submit to the executive director of the department of revenue a report of all such invoices in a form and manner as is prescribed by the executive director. Such records shall be available for inspection by authorized employees of the department of revenue during ordinary business hours.

(3) (a) Every distributor of special fuel shall keep a true and complete record of all purchases, receipts, sales, and distribution of each kind of special fuel handled by such distributor. Every person authorized by the executive director of the department of revenue to purchase special fuel ex-tax from a distributor shall keep a true and complete record of all purchases of each kind of special fuel consumed by motor vehicles operating on the highways of this state and the miles traveled by such vehicles on highways, both within and outside this state. Every person carrying, transporting, importing, or delivering into or within this state special fuel shall keep true and correct records of such shipments for each calendar month. Every refiner in this state shall keep a true and complete record of all sales made of special fuel and copies of all refiner invoices detailing such sales.

(b) Each sale or transfer of special fuel by a distributor to any person shall be recorded upon a preprinted, serially numbered invoice, which shall contain at least the following information:

- (I) The name and address of the distributor;
- (II) The name and department of revenue identification of the purchaser;
- (III) The date of sale or transfer;
- (IV) The amount of special fuel sold, price per unit volume, and total amount of the sale.

(c) Each sale or transfer of special fuel by a vendor into the tank of a motor vehicle weighing more than ten thousand pounds shall be recorded upon a preprinted, serially numbered invoice, a copy of which shall be furnished the purchaser and shall contain at least the following information:

- (I) The name and address of the vendor;
- (II) The date of sale;
- (III) The amount of special fuel sold, price per unit volume, and total amount of the sale;
- (IV) A description of the motor vehicle sufficiently detailed to identify the motor vehicle into which such special fuel was delivered.

(4) All the books, records, papers, receipts, invoices, and equipment of every vendor, distributor, carrier, user, refiner, or other person that pertain to the receipt, sale, or shipment of special fuel shall be subject to inspection at any time during regular business hours by the executive director of the department of revenue or the executive director's representative. Any information gained by the executive director or the director's representatives by the investigation shall be confidential and any person divulging the information, except as such disclosure may be rendered necessary by law, shall be subject to penalties provided in this part 1.

(5) The executive director of the department of revenue may, under rules and procedures adopted by the executive director, establish the format under which the records required by this section are to be maintained, adjust the record-keeping requirements of distributors of liquefied petroleum gases, and require such other information as the executive director deems necessary for the proper administration of this part 1. The records required by this section shall be retained for a period of at least three years.

(6) The fact that any books, papers, records, and equipment required to be maintained by this section are not maintained in this state shall not cause the executive director of the department of revenue or representatives of the executive director to lose any right of such examination.

section amended, p. 1483, § 9, effective January 1, 1980. **L. 95:** (1) amended, p. 985, § 6, effective July 1. **L. 2000:** Entire section amended with relocations, p. 1928, § 9, effective October 1.

Editor's note: Subsections (4), (5), and (6) are similar to provisions of former § 39-27-209 as they existed prior to 2000.

ANNOTATION

Law reviews. For article, "Discovery of Information Obtained by Agency Staff Pursuant to Statutory Audit Powers", see 24 Colo. Law. 279 (1995).

39-27-111. Tax in lieu of all other taxes imposed. The tax imposed by this part 1 shall be in lieu of all other taxes imposed upon gasoline or special fuel by this state or any political subdivision thereof, except for the tax on aviation fuel used in turbo-propeller or jet engine aircraft imposed pursuant to sections 39-26-104 and 39-26-202.

Source: **L. 33:** p. 733, § 9. **CSA:** C. 16, § 389. **CRS 53:** § 138-3-14. **C.R.S. 1963:** § 138-2-14. **L. 79:** Entire section amended, p. 1484, § 10, effective January 1, 1980. **L. 88:** Entire section amended, p. 1093, § 10, effective January 1, 1989. **L. 91:** Entire section amended, p. 2391, § 11, effective July 1. **L. 91, 1st Ex. Sess.:** Entire section amended, p. 7, § 12, effective July 1. **L. 2000:** Entire section amended, p. 1930, § 10, effective October 1.

Editor's note: The amendment to this section made by chapter 1, L. 91, First Extraordinary Session, p. 7, section 12, supersedes the amendment made by chapter 330, L. 91, p. 2391, section 11. Both acts contained a July 1, 1991, effective date. However the Governor did not sign the act enacted at the First Extraordinary Session until July 5. The act contained in chapter 1 from the First Extraordinary Session was subject to an interrogatory submitted to the Supreme Court by the Governor. The court held the act constitutional on its face. See *In re House Bill 91S-1005*, 814 P.2d 875 (Colo. 1991).

39-27-112. Payment of expenses and distribution of funds. (1) Out of the funds thus obtained, the state treasurer shall pay such warrants as may be drawn from time to time by the controller upon vouchers issued by the executive director of the department of revenue for the purpose of making refunds to distributors and others provided for in this part 1.

(2) (a) Repealed.

(b) Effective January 1, 1989, the balance of such funds thus obtained and remaining with the state treasurer shall be placed in the highway users tax fund and distributed in accordance with the provisions of the statute governing that fund; except that, in accordance with section 18 of article X of the Colorado constitution, any moneys included in the balance of such funds which are attributable to the provisions of section 39-27-102 (1) (a) (IV) and which are remaining with the state treasurer on the twentieth day of each month shall be placed in the aviation fund created in section 43-10-109, C.R.S., and distributed in accordance with the provisions of section 43-10-110, C.R.S. The general assembly shall make proportionate appropriations from the highway users tax fund and the aviation fund for the expenses of the administration of this part 1.

(3) (Deleted by amendment, L. 91, 1st Ex. Sess., p. 7, § 13, effective July 1, 1991.)

Source: **L. 33:** p. 733, § 10. **CSA:** C. 16, § 390. **L. 47:** p. 269, § 1. **L. 53:** p. 510, § 18. **CRS 53:** § 138-3-15. **C.R.S. 1963:** § 138-2-15. **L. 64:** p. 657, § 17. **L. 79:** Entire section amended, p. 1485, § 11, effective January 1, 1980. **L. 84:** (2) amended, p. 1026, § 1, effective March 16. **L. 88:** (2) amended and (3) added, p. 1093, § 11, effective January 1, 1989. **L. 91:** (2)(b) and (3) amended, pp. 2398, 1075, §§ 23, 60, effective July 1. **L. 91, 1st Ex. Sess.:** (2)(b) and (3) amended, p. 7, § 13, effective July 1.

Editor's note: (1) Subsection (2)(a) provided for the repeal of subsection (2)(a), effective January 1, 1989. (See L. 88, p. 1093.)

(2) The amendment to this section made by chapter 1, L. 91, First Extraordinary Session, p. 7, section 13, supersedes the amendment made by chapter 188, L. 91, p. 1075, section 60, and chapter 330, L. 91, p. 2398, section 23. Said acts contained a July 1, 1991, effective date. However the Governor did not sign the act enacted at the First Extraordinary Session until July 5. The act contained in chapter 1 from the First Extraordinary Session was subject to an interrogatory submitted to the Supreme Court by the Governor. The court held the act constitutional on its face. See *In re House Bill 91S-1005*, 814 P.2d 875 (Colo. 1991).

39-27-113. Tax lien - priority. (1) If any person fails, neglects, or refuses to pay the tax imposed by this part 1, the amount of the tax, together with any penalties or interest or any costs that accrue in addition thereto, shall be a lien in favor of the state upon all franchises, property, and rights to property, whether real or personal, tangible or intangible, belonging to or thereafter acquired by that person, whether the property is employed by that person in the operation of a business or is in possession of an assignee, trustee, or receiver for the benefit of creditors.

(2) When the property of any distributor is seized upon any mesne or final process of any court of this state or when the business of any distributor is suspended by the action of creditors or put into the hands of any assignee, receiver, or trustee, then in all such cases all gasoline or special fuel tax moneys collected by such distributor under the provisions of this part 1 and due and owing to the state shall be considered and treated as preferred claims, and the state of Colorado shall be a preferred creditor and shall be paid in full.

(3) (a) Notwithstanding the provisions of subsection (1) of this section, the tax imposed by this part 1, except when paid by the user to a vendor, together with penalties and interest thereon, constitutes a lien against any motor vehicle in connection with which the taxable use is made. The lien shall not be removed until the tax, together with penalties and interest, is paid or the motor vehicle subject to the lien is sold in payment of the tax, penalty, and interest. The lien shall be prior to all private liens and encumbrances and to the rights of a conditional vendor or other holder of the legal or equitable title to the motor vehicle.

(b) If ownership of a motor vehicle subject to lien under this subsection (3) is transferred by operation of law or otherwise, no registration or title with respect to such vehicle shall be issued until the lien has been removed.

Source: L. 33: p. 736, § 12. CSA: C. 16, § 392. CRS 53: § 138-3-17. C.R.S. 1963: § 138-2-17. L. 79: Entire section amended, p. 1485, § 12, effective January 1, 1980. L. 2000: Entire section amended with relocations, p. 1930, § 11, effective October 1.

Editor's note: Subsections (2) and (3) are similar to provisions of former § 39-27-210 as they existed prior to 2000.

ANNOTATION

State's prerogative right of preference or priority cannot pass to a surety by way of subrogation. *New Mexico Asphalt & Ref. Co. v. Williams*, 131 F. Supp. 297 (D. Colo. 1955).

39-27-114. False oath. Any person who makes any oath, affirmation, affidavit, return, or deposition required to be made or taken under any of the provisions of this part 1 and who, upon such oath, affirmation, affidavit, return, or deposition, swears or affirms willfully and falsely in a matter material to any issue, point, or subject matter in question, in addition to any other penalties provided in this part 1, is guilty of perjury in the second degree, as defined in section 18-8-503, C.R.S.

Source: L. 33: p. 736, § 13. CSA: C. 16, § 393. CRS 53: § 138-3-18. C.R.S. 1963: § 138-2-18. L. 72: p. 572, § 61. L. 79: Entire section amended, p. 1485, § 13, effective January 1, 1980.

39-27-115. Night deliveries. (Repealed)

Source: L. 33: p. 737, § 14. CSA: C. 16, § 394. CRS 53: § 138-3-19. C.R.S. 1963: § 138-2-19. L. 79: Entire section repealed, p. 1501, § 29, effective January 1, 1980.

39-27-116. Authority of executive director - enforcement. (1) (a) It is the duty of the executive director of the department of revenue to see that all of the provisions of this part 1 are enforced and obeyed, and that all violations thereof are promptly prosecuted, and that all taxes and penalties are collected. To that end, the executive director has the power to make and adopt such rules and regulations relating to the administration and enforcement of the provisions of this part 1 as may be deemed proper and rules and regulations to govern his proceedings and to regulate the mode and manner of all investigations and hearings and to alter and amend the same.

(b) It is the duty of officers of the Colorado state patrol, and sheriffs, county police officers, city, village, and town police officers, and all other officers whose duty it is to see to the enforcement of state laws to aid the executive director in the enforcement of this part 1. Upon request of the executive director, it is the duty of the attorney general or any district attorney to commence and prosecute to final determination in any court of competent jurisdiction all necessary actions to enforce the provisions of this part 1.

(c) All the remedies and penalties provided by this part 1 shall be cumulative, and no action or suit for recovery of one penalty, or of the tax, shall be a bar to the recovery of any other penalty or to any criminal prosecution under this part 1. The inspectors, investigators, or other persons designated by the executive director have all the powers conferred by law to serve warrants, summons, and other processes, to conduct sales in any county or city and county of this state, and to require the operator of any vehicle to stop and upon demand to exhibit any permits, licenses, registration cards, or other papers or documents required to be in his possession and to submit to a complete inspection of such vehicle and the equipment, cargo, fuel tanks, interior, and license plates.

(d) If the owner or operator of any vehicle is in violation of any of the provisions of this part 1, officers of the Colorado state patrol, sheriffs, county police officers, and city, village, and town police officers and the inspectors, investigators, or other persons designated by the executive director have the power to detain such vehicle until such time as the violation ceases.

(2) It is the duty of the executive director of the department of revenue, at the time of issuance of any new license to a refiner or distributor under this part 1, to notify the county treasurer of the county where the new licensee is located of the name and address of such licensee.

Source: L. 33: p. 737, § 15. CSA: C. 16, § 395. L. 53: p. 163, § 6. CRS 53: § 138-3-20. C.R.S. 1963: § 138-2-20. L. 70: p. 391, § 5. L. 79: Entire section amended, p. 1485, § 14, effective January 1, 1980.

39-27-117. Filing with executive director - when deemed to have been made.

(1) Any report, claim, tax return, statement, or other document required or authorized under this part 1 to be filed with, or any payment made to, the executive director of the department of revenue, which:

(a) Is transmitted through the United States mails, shall be deemed filed with and received by the executive director on the date shown by the cancellation mark stamped on the envelope or other wrapper containing the document required to be filed;

(b) Is mailed, but not received by the executive director, or where received and the cancellation mark is not legible, or is erroneous or omitted, shall be deemed to have been filed and received on the date it was mailed if the sender establishes by competent evidence that the document was deposited in the United States mails on or before the date due for filing. In such cases of nonreceipt of a document by the executive director, the sender shall file a duplicate copy thereof within thirty days after written notification is given to the sender by the executive director of the failure to receive such document.

(2) If any report, claim, tax return, statement, remittance, or other document is sent by United States registered mail, certified mail, or certificate of mailing, a record authenticated by the United States post office department of such registration, certification, or certificate shall be considered competent evidence that the report, claim, tax return, statement, remittance, or other document was mailed to the executive director, to the state officer or state agency to which it was addressed, and the date of the registration, certification, or certificate shall be deemed to be the postmark date.

(3) If the date for filing any report, claim, tax return, statement, remittance, or other document, falls upon a Saturday, Sunday, or a legal holiday, it shall be deemed to have been timely filed if filed on the next business day.

(4) Any report, claim, tax return, statement, or other document required or authorized under this part 1 to be filed with the executive director of the department of revenue that is filed electronically shall be treated for all purposes in the same manner as any other report or other document filed electronically pursuant to section 39-21-120.

Source: L. 67: p. 496, § 1. C.R.S. 1963: § 138-2-28. L. 79: IP(1) amended, p. 1486, § 15, effective January 1, 1980. L. 2000: (4) added, p. 1931, § 12, effective October 1.

39-27-118. Exchange of information. (Repealed)

Source: L. 33: p. 738, § 16. CSA: C. 16, § 396. L. 51: p. 183, § 1. CRS 53: § 138-3-21. C.R.S. 1963: § 138-2-21. L. 79: Entire section repealed, p. 1501, § 29, effective January 1, 1980.

39-27-119. Not applicable to interstate commerce. No provision of this part 1 shall apply or be construed to apply to interstate commerce.

Source: L. 33: p. 739, § 17. CSA: C. 16, § 397. CRS 53: § 138-3-22. C.R.S. 1963: § 138-2-22. L. 79: Entire section amended, p. 1486, § 16, effective January 1, 1980.

ANNOTATION

Law reviews. For article, "Criminal Equity" in Colorado", see 8 Rocky Mt. L. Rev. 273 (1936).

lading. People v. Home Oil & Supply Co., 95 Colo. 143, 34 P.2d 67 (1934).

Goods outside interstate commerce cannot be cloaked therein by manipulating bills of

39-27-120. Penalties. Any person who in any way violates any of the provisions of this part 1 for which no penalty is expressly provided shall be punished as provided by section 39-21-118. In addition to the foregoing penalties, the executive director of the department of revenue may suspend or revoke the license of any distributor who violates any of the provisions of this part 1 and shall notify such distributor of such suspension or revocation and, upon application to any court of competent jurisdiction without furnishing bond, shall be entitled to an injunction restraining any such distributor from operating, transporting, using, selling, delivering, or transferring any gasoline or special fuel in this state while the license or permit of such distributor has been suspended or revoked. The attorney general shall institute an action on behalf of the state against any person required to collect or pay the tax imposed by this part 1, or the sureties of such person, to collect or recover the amount of tax due from such person, together with penalties and interest thereon.

Source: L. 33: p. 733, § 8. CSA: C. 16, § 388. L. 53: p. 162, § 5. CRS 53: § 138-3-13. C.R.S. 1963: § 138-2-13. L. 79: Entire section amended, p. 1486, § 17, effective January 1, 1980. L. 85: Entire section amended, p. 1261, § 20, effective January 1, 1986. L. 2000: Entire section amended, p. 1931, § 13, effective October 1.

ANNOTATION

Injunction lies to restrain use of fuel not taxed. While it is the general rule that injunction does not lie to restrain the commission of a crime, there are exceptions to that rule, and a

suit by the state to restrain the use of motor fuel upon which the statutory tax has not been paid is within the exceptions. *State v. Tolbert*, 98 Colo. 433, 56 P.2d 45 (1936).

39-27-121. State treasurer custodian of deposits. All surety bonds and negotiable certificates of deposit deposited in compliance with the provisions of this part 1 shall be delivered into the custody of the state treasurer and held by the treasurer subject to further order of the executive director of the department of revenue. In the event any licensee ceases operations, voluntarily or otherwise, the deposit made by the licensee, or any balance thereof, shall be returned to the licensee after all taxes, penalties, fees, and charges owing by said licensee, pursuant to this part 1, have been paid.

Source: L. 73: p. 1456, § 6. C.R.S. 1963: § 138-2-29. L. 79: Entire section amended, p. 1487, § 18, effective January 1, 1980. L. 2000: Entire section amended, p. 1932, § 14, effective October 1.

PART 2

SPECIAL FUEL TAX

39-27-201 to 39-27-218. (Repealed)

Source: L. 2000: Entire part repealed, p. 1939, § 23, effective October 1.

Editor's note: Some provisions of this part 2 were relocated to part 1 of this article in 2000. This part 2 was added in 1979. For amendments to this part 2 prior to its repeal in 2000, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

PART 3

MOTOR FUELS AGREEMENTS

39-27-301. Definitions. As used in this part 3, unless the context otherwise requires:

- (1) "Agreement" means a motor fuel tax agreement under this part 3.
- (2) "Base jurisdiction" means the jurisdiction in which the motor carrier is legally domiciled or, in the case of a motor carrier who has no legal domicile, the jurisdiction from or in which the motor carrier's vehicles are most frequently dispatched, garaged, serviced, maintained, operated, or otherwise controlled.
- (3) "Department" means the department of revenue.
- (3.5) "Jurisdiction" means a state, territory, or possession of the United States, the District of Columbia, or a foreign country, including a state, province, territory, or possession of a foreign country.
- (4) "Licensee" means a motor carrier who has been issued a fuel tax license under a motor fuel tax agreement.
- (5) "Motor carrier" means an individual, limited liability company, partnership, firm, association, or private or public corporation engaged in commercial operation of motor vehicles involving two or more jurisdictions, any part of which is within this state or any other jurisdiction that is party to an agreement under this part 3.
- (6) "Motor fuel" means all fuel subject to tax under this article.
- (7) (Deleted by amendment, L. 98, p. 1093, § 1, effective June 1, 1998.)

Source: L. 88: Entire part added, p. 1334, § 1, effective April 14; (5) amended, p. 1437, § 39, effective June 11. L. 90: (5) amended, p. 458, § 43, effective April 18. L. 98: (2), (5), and (7) amended and (3.5) added, p. 1093, § 1, effective June 1.

39-27-302. Agreements between jurisdictions. The department may enter into a motor fuel tax cooperative agreement with another jurisdiction or jurisdictions that provide for the administration, collection, and enforcement of each jurisdiction's motor fuel taxes on motor fuel used by motor carriers. The agreement shall not contain any provision that exempts any motor vehicle, owner, or operator from complying with the laws, rules, and regulations pertaining to motor vehicle licensing, size, weight, load, or operation upon the public highways of this state.

Source: L. 88: Entire part added, p. 1335, § 1, effective April 14. L. 98: Entire section amended, p. 1094, § 2, effective June 1.

39-27-303. Tax imposed. The amount of the tax imposed and collected on behalf of this state under an agreement entered into under this part 3 shall be determined as provided in parts 1 and 2 of this article.

Source: L. 88: Entire part added, p. 1335, § 1, effective April 14.

Editor's note: Part 2 of this article, referenced in this section, was repealed, effective October 1, 2000, but has been left in for historical purposes.

39-27-304. Provisions of agreements. (1) An agreement entered into under this part 3 may provide for:

(a) Defining the classes of motor vehicles upon which taxes are to be collected under the agreement;

(b) Establishing methods for base jurisdiction fuel tax licensing, license revocation, and tax collection from motor carriers on behalf of the jurisdictions that are parties to the agreement;

(c) Establishing procedures for the granting of credits or refunds on the purchase of excess tax-paid fuel;

(d) Defining conditions and criteria relative to bonding requirements, including criteria for exemption from bonding;

(e) Establishing tax reporting periods not to exceed one calendar quarter and tax report due dates not to exceed one calendar month after the close of the reporting period;

(f) Penalties and interest for filing of tax reports after the due dates prescribed by the agreement;

(g) Establishing procedures for the forwarding of fuel taxes, penalties, and interest collected on behalf of another jurisdiction to such jurisdiction;

(h) Record-keeping requirements for licensees; and

(i) Any additional provisions which facilitate the administration of the agreement.

Source: L. 88: Entire part added, p. 1335, § 1, effective April 14. L. 98: (1)(b) and (1)(g) amended, p. 1094, § 3, effective June 1.

39-27-305. Credit for purchases. Any licensee purchasing more tax-paid motor fuel in this state than the licensee uses in this state during the course of a reporting period shall be permitted a credit against future tax liability for the excess tax-paid fuel purchased. Upon request, this credit may be refunded to the licensee by the department in accordance with the agreement.

Source: L. 88: Entire part added, p. 1335, § 1, effective April 14.

39-27-306. Tax collection. (1) The agreement may require the department to perform audits of licensees or persons required to be licensed and who are based in this state to

determine whether motor fuel taxes to be collected under the agreement have been reported properly and paid to each jurisdiction that is a party to the agreement. The agreement may authorize other jurisdictions to perform audits on licensees or persons required to be licensed and who are based in such other jurisdictions on behalf of the state of Colorado and forward the audit findings to the department. Such findings may be served upon the licensee or such other person in the same manner as audits performed by the department.

(2) The agreement shall not preclude the department from auditing the records of any person who has used motor fuels in this state. Any licensee or person required to be licensed from whom the department has requested records shall make the records available at the location designated by the department or may request the department to audit such records at that licensee's or person's place of business. If the place of business is located outside this state, the department may require the licensee or such other person to reimburse the department for authorized per diem and travel expenses.

Source: L. 88: Entire part added, p. 1335, § 1, effective April 14. L. 98: (1) amended, p. 1094, § 4, effective June 1.

39-27-307. Compliance. (1) The department may initiate and conduct investigations as may be reasonably necessary to establish the existence of any alleged violations of or noncompliance with this part 3 or any rules or regulations issued pursuant to section 39-27-310 (2).

(2) For the purpose of any investigation or proceeding under this part 3, the director or any officer designated by the director may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the director deems relevant or material to the inquiry.

Source: L. 88: Entire part added, p. 1336, § 1, effective April 14.

39-27-308. Appeals. The agreement shall specify procedures by which a licensee may appeal a license revocation or audit assessment by the department.

Source: L. 88: Entire part added, p. 1336, § 1, effective April 14.

39-27-309. Exchange of information. The agreement may require each jurisdiction to forward to other jurisdictions that are a party to the agreement any information available relating to the acquisition, sales, use, or movement of motor fuels by any licensee or person required to be licensed. The department may further disclose to other jurisdictions that are a party to the agreement information relating to the persons, offices, motor vehicles, and other real and personal property of persons licensed or required to be licensed under the agreement.

Source: L. 88: Entire part added, p. 1336, § 1, effective April 14. L. 98: Entire section amended, p. 1094, § 5, effective June 1.

39-27-310. Construction of this part 3 - rules and regulations. (1) This part 3 shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this part 3 among jurisdictions enacting it for the purpose of participating in a multijurisdictional motor fuel tax agreement.

(2) The department shall adopt such rules and regulations as are necessary to implement this part 3 and any agreement entered into under this part 3.

Source: L. 88: Entire part added, p. 1336, § 1, effective April 14. L. 98: (1) amended, p. 1095, § 6, effective June 1.

Tobacco Tax**ARTICLE 28****Cigarette Tax**

Cross references: For the constitutional provision that establishes limitations on spending, the imposition of taxes, and the incurring of debt, see § 20 of article X of the state constitution; for the apportionment of the gross state cigarette tax to incorporated cities and incorporated towns, see § 39-22-623.

PART 1**CIGARETTE TAX**

- 39-28-101. Definitions.
- 39-28-102. Licensing of wholesalers - rules - fines.
- 39-28-102.5. Licensing of wholesale subcontractors - rules - fines.
- 39-28-103. Tax levied.
- 39-28-103.5. Tax levied - state constitution.
- 39-28-104. Evidence of payment of tax - credits - redemptions.
- 39-28-104.5. Federal requirements - placement of labels - penalty.
- 39-28-105. Use of metering machines.
- 39-28-106. Nonresident wholesalers.
- 39-28-107. Unstamped packages - tax collected - fines - subject to confiscation - tobacco tax enforcement cash fund - creation.
- 39-28-108. Penalty.
- 39-28-109. Records - examination - returns.
- 39-28-110. Distribution of tax collected.
- 39-28-111. Exempt sales.
- 39-28-112. Taxation by cities and towns.

39-28-113.

Provisions not applicable.

39-28-114.

Prohibited acts - penalties.

39-28-115.

List of licensed wholesalers - published on web site.

PART 2**TOBACCO ESCROW FUNDS**

39-28-201.

Legislative declaration.

39-28-202.

Definitions.

39-28-203.

Requirements.

PART 3**ADDITIONAL REQUIREMENTS FOR TOBACCO PRODUCT MANUFACTURERS AND STAMPING AGENTS**

39-28-301.

Legislative declaration.

39-28-302.

Definitions.

39-28-303.

Certifications - directory - tax stamps.

39-28-304.

Agent for service of process.

39-28-305.

Reporting of information - escrow installments.

39-28-306.

Penalties and other remedies.

39-28-307.

Miscellaneous provisions.

PART 1**CIGARETTE TAX**

39-28-101. Definitions. As used in this article, unless the context otherwise requires:

(1) "Consumer" means any person, firm, limited liability company, partnership, or corporation who has title to or possession of cigarettes in storage for use or consumption in this state.

(2) "Department" means the department of revenue.

(2.5) "Master settlement agreement" shall have the same meaning as section 39-28-202 (5).

(3) "Sale" or "resale" includes installment, credit, and conditional sales and means any exchange, barter, or transfer of title or possession, or both, for a consideration to any other person, firm, partnership, limited liability company, or corporation within this state. It includes a gift by a person engaged in the business of selling cigarettes for advertising as a means of evading provisions of this article or for any other purpose whatsoever.

(4) "Wholesaler" means any person, firm, limited liability company, partnership, or corporation who imports cigarettes into this state for sale or resale.

(5) "Wholesale subcontractor" means any person, firm, limited liability company, partnership, or corporation who purchases cigarettes from a wholesaler for resale to a retailer in this state.

Source: L. 64: p. 821, § 1. C.R.S. 1963: § 138-8-1. L. 90: (1), (3), and (4) amended, p. 458, § 44, effective April 18. L. 2005: (2.5) and (5) added, p. 717, § 1, effective June 1.

39-28-102. Licensing of wholesalers - rules - fines. (1) It is unlawful for any wholesaler to sell or offer for sale in this state cigarettes without first obtaining a license therefor, granted and issued by the department, which license shall be in effect until June 30 following the date of issue, unless sooner revoked. Such licenses shall be granted only to such wholesalers who own or operate the places from which such sales are to be made, and, in case sales are made from two or more separate places by any such wholesaler, a separate license for each place of business shall be required. Such licenses shall be renewed only upon timely application and payment of the required fee prior to expiration. Such licenses may be transferred in the discretion of and pursuant to the rules adopted by the department. The license fee shall be ten dollars per year, and such license fees shall be credited to the general fund. Such license fees shall be reduced at the rate of two dollars and fifty cents for each expired quarter of the license year. The department shall, on reasonable notice and after a hearing, suspend or revoke the license of any wholesaler violating any provision of this article, and no license shall be issued to such wholesaler within a period of two years thereafter. The department may share information on the names and addresses of persons who purchased cigarettes for resale with the department of public health and environment and county and district public health agencies. The department shall refuse to issue a new or renewal wholesaler license, and shall revoke a wholesaler's license, if the wholesaler owes the state any delinquent taxes administered by the department or interest thereon pursuant to this title that have been determined by law to be due and unpaid, unless the wholesaler has entered into an agreement approved by the department to pay the amount due.

(1.3) (a) In addition to the requirements set forth in subsection (1) of this section, no license shall be issued to a wholesaler unless the wholesaler:

(I) Has a current license issued pursuant to section 39-26-103;

(II) Provides evidence to the satisfaction of the executive director of the department demonstrating that the wholesaler will buy cigarettes from at least one manufacturer that is either part of the master settlement agreement or that places funds into a qualified escrow account pursuant to section 39-28-203 (2); and

(III) Has filed with the department evidence of a surety bond issued by a company authorized to do business in this state in an amount equal to the wholesaler's anticipated total monthly purchase of stamps pursuant to section 39-28-104 for the benefit of the department. The amount of a wholesaler's anticipated total monthly purchase shall be determined solely in the discretion of the wholesaler. A wholesaler may file a replacement surety bond if the wholesaler's anticipated total monthly purchase of stamps changes after the wholesaler has been issued a license pursuant to this section.

(b) In addition to the requirements set forth in subsection (1) of this section, no license shall be renewed unless a wholesaler:

(I) Has a current license issued pursuant to section 39-26-103;

(II) Provides evidence to the satisfaction of the executive director of the department demonstrating that the wholesaler has bought and will continue to buy cigarettes from at least one manufacturer that is either part of the master settlement agreement or places funds into a qualified escrow account pursuant to section 39-28-203 (2); and

(III) Has filed with the department evidence of a surety bond issued by a company authorized to do business in this state in an amount equal to the wholesaler's anticipated total monthly purchase of stamps pursuant to section 39-28-104 for the benefit of the department. The amount of a wholesaler's anticipated total monthly purchase shall be solely in the discretion of the wholesaler. For each consecutive preceding year that a wholesaler has not been delinquent in the payment of taxes imposed under this part 1, as determined

by the executive director of the department, the amount of the bond required shall be reduced by twenty percentage points of the wholesaler's anticipated total monthly purchase of stamps. A wholesaler may file a replacement surety bond if the wholesaler's anticipated total monthly purchase of stamps changes after the wholesaler's license has been renewed pursuant to this section. A wholesaler that has not been delinquent in the payment of such taxes for five consecutive years shall be exempt from the requirement to file a surety bond with the department.

(1.5) (Deleted by amendment, L. 2008, p. 182, § 1, effective August 5, 2008.)

(2) Repealed.

Source: L. 64: p. 821, § 2. C.R.S. 1963: § 138-8-2. L. 2001: Entire section amended, p. 579, § 4, effective May 30. L. 2004: Entire section amended, p. 246, § 1, effective August 4. L. 2005: (1) amended and (1.3) added, p. 717, § 2, effective June 1. L. 2008: (1) and (1.5) amended, p. 182, § 1, effective August 5. L. 2010: (1) amended, (HB 10-1422), ch. 419, p. 2122, § 177, effective August 11.

Editor's note: Subsection (2)(b) provided for the repeal of subsection (2), effective July 1, 2008. (See L. 2004, p. 246.)

39-28-102.5. Licensing of wholesale subcontractors - rules - fines. (1) It is unlawful for any wholesale subcontractor to sell or offer for sale cigarettes to a retailer in this state without first obtaining a license therefor, granted and issued by the department, which license shall be in effect until June 30 following the date of issue, unless sooner revoked. Such licenses shall be granted only to such wholesale subcontractors who own or operate the places from which such sales are to be made, and, in case sales are made from two or more separate places by any such wholesale subcontractor, a separate license for each place of business shall be required. No license shall be issued to a wholesale subcontractor unless the wholesale subcontractor has a current license issued pursuant to section 39-26-103. Such licenses shall be renewed only upon timely application and payment of the required fee prior to expiration. Such licenses may be transferred in the discretion of and pursuant to rules adopted by the department. The license fee shall be ten dollars per year, and such license fees shall be credited to the wholesale and distributing subcontractor license fund, which is hereby created in the state treasury. All moneys in the fund shall be subject to annual appropriation by the general assembly to the department for costs incurred in administering this section and section 39-28.5-104.5. Such license fees shall be reduced at the rate of two dollars and fifty cents for each expired quarter of the license year. The department shall, on reasonable notice and after a hearing, suspend or revoke the license of any wholesale subcontractor violating any provision of this article, and no license shall be issued to such wholesale subcontractor within a period of two years thereafter. The department may share information on the names and addresses of persons who purchased cigarettes from a wholesale subcontractor for resale with the department of public health and environment and county and district public health agencies. The department shall refuse to issue a new or renewal wholesale subcontractor license and shall revoke a wholesale subcontractor's license, if the wholesaler owes the state any delinquent taxes administered by the department or interest thereon pursuant to this title that have been determined by law to be due and unpaid, unless the wholesaler has entered into an agreement approved by the department to pay the amount due.

(2) (Deleted by amendment, L. 2008, p. 183, § 2, effective August 5, 2008.)

Source: L. 2005: Entire section added, p. 719, § 3, effective June 1. L. 2008: Entire section amended, p. 183, § 2, effective August 5. L. 2010: (1) amended, (HB 10-1422), ch. 419, p. 2122, § 178, effective August 11.

39-28-103. Tax levied. There is levied and shall be collected and paid to the department a tax upon the sale of cigarettes by wholesalers of ten mills on each cigarette.

Source: L. 64: p. 822, § 3. C.R.S. 1963: § 138-8-3. L. 65: p. 1129, § 1. L. 73: p. 1451, § 2. L. 77: Entire section amended, p. 1793, § 4, effective July 1. L. 83: (3) added, p. 2099, § 11, effective October 13; (2) repealed, p. 2053, § 28, effective October 14. L. 85: Entire section R&RE, p. 1267, § 4, effective May 30. L. 86: Entire section amended, p. 1113, § 11, effective July 1.

Cross references: For tax on tobacco products other than cigarettes, see article 28.5 of this title.

39-28-103.5. Tax levied - state constitution. Pursuant to section 21 of article X of the state constitution, there is levied, in addition to the tax levied pursuant to section 39-28-103, a tax on the sale of cigarettes by wholesalers, at a rate of three and two-tenths cents per cigarette. The tax shall be paid to and collected by the department.

Source: L. 2005: Entire section added, p. 907, § 2, effective June 2; entire section added, p. 922, § 3, effective June 2.

Cross references: For the legislative declaration contained in the 2005 act enacting this section, see section 1 of chapter 241, Session Laws of Colorado 2005.

39-28-104. Evidence of payment of tax - credits - redemptions. (1) (a) Payment of the taxes imposed by the provisions of this article and section 21 of article X of the state constitution shall be evidenced by the affixing of stamps to, or by an imprint or impression by suitable metering machines approved by the department on, packages containing cigarettes. The department shall procure stamps of such design and legend as it deems necessary and suitable for the purpose. Except as provided in paragraph (b) of this subsection (1), the department shall sell such stamps for cash to licensed wholesalers at a discount of four percent of their face value for sales occurring prior to July 1, 2003, or on or after July 1, 2005, and three percent of their face value for sales occurring on or after July 1, 2003, but before July 1, 2005, if payment is made on or before the tenth day of the month following the month in which the purchase is made to cover the licensed wholesaler's expense in the collection and remittance of such tax; but, if any licensed wholesaler is delinquent in remitting such payment, other than in unusual circumstances shown to the satisfaction of the executive director of the department, the licensed wholesaler shall not be allowed to retain any amounts to cover his or her expense in collecting and remitting said tax, and, in addition, the penalty imposed under section 39-28-108 (2) shall apply. The department shall keep accurate records of all stamps sold to each wholesaler. No wholesaler shall sell or transfer any stamps purchased pursuant to the provisions of this article.

(b) The tax imposed pursuant to section 39-28-103.5 and section 21 of article X of the state constitution shall not be subject to the discount provided for in paragraph (a) of this subsection (1).

(c) Wholesalers shall electronically remit tax payments due pursuant to this article and section 21 of article X of the state constitution to the department. The department may require wholesalers to file tax returns electronically. The department shall promulgate rules governing electronic payment and filing.

(1.5) In any month that a wholesaler purchases an amount of stamps that is greater than the wholesaler's anticipated total monthly purchase of stamps, which shall be determined from the surety bond filed pursuant to section 39-28-102 (1.3) (a) (III) and (1.3) (b) (III), the wholesaler shall be required to pay cash or certified funds or use one of the electronic payment options offered by the department for the stamps that exceed the anticipated total monthly purchase of stamps upon the delivery of the stamps. This subsection (1.5) shall not apply if the wholesaler is exempt from the surety bond requirement pursuant to section 39-28-102 (1.3) (b) (III).

(2) Each wholesaler shall affix stamps or cause them to be affixed, in such manner as the department may specify, to each individual package of cigarettes sold or distributed by such wholesaler or, in lieu thereof, an imprint or impression by means of a suitable metering machine approved by the department. Such stamps or imprints or impressions may be

affixed by the wholesaler at any time before the cigarettes are transferred out of his possession.

(3) Credit shall be given by the department for all taxes levied pursuant to the provisions of this article on unsalable merchandise when the department is satisfied that the same has been returned to the manufacturer or has been destroyed by the wholesaler. The department shall redeem any unused and uncanceled stamps presented by any wholesaler within one year after the date of issue of said stamps at the price paid therefor by such wholesaler.

(4) (a) Credit shall be given by the department to a wholesaler for all taxes levied pursuant to this article and section 21 of article X of the state constitution and paid pursuant to the provisions of this article that are bad debts. Such credit shall offset taxes levied pursuant to this article and section 21 of article X of the state constitution and paid pursuant to the provisions of this article only. No credit shall be given unless the bad debt has been charged off as uncollectible on the books of the wholesaler. Subsequent to receiving the credit, if the wholesaler receives a payment for the bad debt, the wholesaler shall be liable to the department for the amount received and shall remit this amount in the next payment to the department under this section or section 39-28-105.

(b) Any claim for a bad debt credit under this subsection (4) shall be supported by all of the following:

(I) A copy of the original invoice issued by the wholesaler;

(II) Evidence that the cigarettes described in the invoice were delivered to the person who ordered them; and

(III) Evidence that the person who ordered and received the cigarettes did not pay the wholesaler for them and that the wholesaler used reasonable collection practices in attempting to collect the debt.

(c) If credit is given to a wholesaler for a bad debt, the person who ordered and received the cigarettes but did not pay the wholesaler for them shall be liable in an amount equal to the credit for the tax imposed in this article on the cigarettes. Subsequent to receiving the credit, if the wholesaler receives a payment for the bad debt and the wholesaler makes a payment to the department, the amount of taxes owed by such person shall be reduced by the amount paid to the department.

(d) As used in this subsection (4), "bad debt" means the taxes attributable to any portion of a debt that is related to a sale of cigarettes subject to tax under this article, that is not otherwise deductible or excludable, that has become worthless or uncollectible in the time after the tax has been paid pursuant to this section or section 39-28-105, and that is eligible to be claimed as a deduction pursuant to section 166 of the federal "Internal Revenue Code of 1986", as amended. A bad debt shall not include any interest on the wholesale price of cigarettes, uncollectible amounts on property that remain in the possession of the wholesaler until the full purchase price is paid, expenses incurred in attempting to collect any account receivable or any portion of the debt recovered, an account receivable that has been sold to a third party for collection, or repossessed property.

Source: L. 64: p. 822, § 1. C.R.S. 1963: § 138-8-4. L. 65: p. 1129, § 2. L. 73: p. 1451, § 3. L. 83: (1) amended, p. 2106, § 1, effective October 14. L. 86: (1) amended, p. 1113, § 12, effective July 1. L. 87: (1) amended, p. 1466, § 1, effective April 16. L. 88: (1) amended, p. 1338, § 1, effective July 1. L. 2003: (1) amended, p. 2636, § 4, effective June 5. L. 2004: (4) added, p. 265, § 1, effective August 4. L. 2005: (1.5) added, p. 720, § 4, effective June 1; (1) and (4)(a) amended, p. 907, § 3, effective June 2; (1) and (4)(a) amended, p. 922, § 4, effective June 2.

Cross references: For the legislative declaration contained in the 2005 act amending subsections (1) and (4)(a), see section 1 of chapter 241, Session Laws of Colorado 2005.

39-28-104.5. Federal requirements - placement of labels - penalty. (1) No person shall import into this state any package of cigarettes that violates any federal requirement for the placement of labels, warnings, or other information, including health hazards, required to be placed on the container or individual package.

(2) No person shall sell or offer to sell a package of cigarettes or affix the stamp or imprint required by section 39-28-104 on a package of cigarettes unless that package of cigarettes complies with all federal tax laws, federal trademark and copyright laws, and federal laws regarding the placement of labels, warnings, or any other information upon a package of cigarettes.

(3) No person shall sell or offer to sell a package of cigarettes or affix the stamp or imprint required by section 39-28-104 on a package of cigarettes if the package is marked as manufactured for use outside of the United States or if any label or language has been altered from the manufacturer's original packaging and labeling to conceal the fact that the package was manufactured for use outside of the United States.

(4) (a) No person shall affix a stamp, label, or decal on a package of cigarettes to conceal the fact that the package was manufactured for use outside of the United States.

(b) No person shall sell or offer to sell a package of cigarettes on which a stamp, label, or decal was affixed to conceal the fact that the package was manufactured for use outside of the United States.

(5) The violation of any provision of this section is a class 1 misdemeanor.

(6) (a) Any package of cigarettes found for sale at retail or wholesale at any place in this state that is marked for use outside of the United States is declared to be contraband goods and may be seized without a warrant by the department, by its agents or employees, or by any peace officer in this state when directed or requested by the department to do so. Nothing in this section shall be construed to require the department to confiscate packages of cigarettes that are so marked in quantities less than ten cartons when the packages are held for personal consumption and not for resale.

(b) Any cigarettes seized by virtue of the provisions of this subsection (6) shall be confiscated, and the department shall destroy such confiscated goods.

Source: L. 99: Entire section added, p. 92, § 1, effective March 24.

ANNOTATION

The state's ability to declare packages of cigarettes marked in compliance with the federal packaging requirements as contraband is not intrusive on the advertising or promotion of these cigarettes and is, therefore, not precluded by the supremacy clause. *Premium Tobacco Stores, Inc. v. Fisher*, 51 F. Supp.2d 1099 (D. Colo. 1999).

Plaintiff not likely to prevail on equal protection challenge of this statute. Reviewing the statute under the rational basis test, the state's desire to curb youth smoking and to shift the health-related costs of smoking onto the smoking public are legitimate governmental objectives. *Premium Tobacco Stores, Inc. v. Fisher*, 51 F. Supp.2d 1099 (D. Colo. 1999).

Plaintiff not likely to prevail on contract clause challenge of this statute. The state has demonstrated a significant and legitimate public purpose for the prohibition against repatriated tobacco products in the health and cost shifting goals of the master settlement agreement, reached between various states and the tobacco companies, which are protected by this statute. Additionally, the state's adjustment of the right to sell a product deemed dangerous to the health of its citizenry by prohibiting the further sale and distribution of that product is appropriate to the public purpose. *Premium Tobacco Stores, Inc. v. Fisher*, 51 F. Supp.2d 1099 (D. Colo. 1999).

39-28-105. Use of metering machines. (1) The department, if it determines that it is practicable to stamp by imprint or impression on packages of cigarettes by means of a metering machine, may authorize any licensed wholesaler to use any metering machine approved by the department in lieu of requiring the wholesaler to affix stamps to such packages. Such metering machines shall be sealed by the department and shall be used in accordance with rules and regulations prescribed by it. Any wholesaler authorized to use a metering machine shall file with the department evidence of a savings account, deposit, or certificate of deposit meeting the requirements of section 11-35-101, C.R.S., or a bond issued by a surety company authorized to do business in this state in the amount of one thousand dollars, conditioned upon the payment of the tax upon cigarettes so imprinted.

(2) (a) The department may cause each metering machine approved by it to be read and

inspected at least once each month. The department shall set the machine to the number of units requested by the wholesaler and shall determine as of the time of setting the amount of tax due from the wholesaler using such machine, after allowing the discount provided in section 39-28-104. The tax for each unit placed on the machine at the time of setting, less any discount that is not otherwise prohibited by paragraph (b) of this subsection (2) to cover the licensed wholesaler's expense in the collection and remittance of such tax, shall be due and payable to the department on or before the tenth day of the month following the month in which the meter is set. If any licensed wholesaler is delinquent in remitting such payment, other than in unusual circumstances shown to the satisfaction of the executive director, the licensed wholesaler shall not be allowed to retain any amounts to cover his or her expense in collecting and remitting said tax, and, in addition, the penalty imposed under section 39-28-108 (2) shall apply.

(b) The tax imposed pursuant to section 39-28-103.5 and section 21 of article X of the state constitution shall not be subject to the discount provided for in paragraph (a) of this subsection (2).

Source: L. 64: p. 823, § 5. C.R.S. 1963: § 138-8-5. L. 79: (1) amended, p. 428, § 23, effective July 1. L. 83: (2) amended, p. 2106, § 2, effective October 14. L. 86, 2nd Ex. Sess.: (2) amended, p. 74, § 2, effective August 15. L. 87: (2) amended, p. 1468, § 1, effective May 1. L. 88: (2) amended, p. 1338, § 2, effective July 1. L. 2005: (2) amended, p. 908, § 4, effective June 2; (2) amended, p. 923, § 5, effective June 2.

Cross references: For the legislative declaration contained in the 2005 act amending subsection (2), see section 1 of chapter 241, Session Laws of Colorado 2005.

39-28-106. Nonresident wholesalers. (1) When the department determines that the collection of the tax imposed by the provisions of this article and section 21 of article X of the state constitution would be facilitated thereby, it may authorize any person, firm, limited liability company, partnership, or corporation outside of this state and engaged in the business of selling and shipping into this state cigarettes, upon complying with the requirements of this article, to affix or cause to be affixed the stamps, imprints, or impressions required by this article on behalf of the wholesalers within this state. The department may sell such stamps and approve the use of metering machines to such nonresident wholesalers as provided in this article; except that the nonresident wholesaler shall agree in writing to submit his or her books, accounts, and records to examination during reasonable business hours by any duly authorized agent of the department. Each such nonresident wholesaler shall appoint in writing the secretary of state of the state of Colorado to be his or her agent in this state for service of process, pursuant to part 7 of article 90 of title 7, C.R.S., with respect to foreign corporations.

(2) Any nonresident wholesaler complying with the requirements and provisions of this section shall be deemed a licensed wholesaler within the meaning of this article and shall be subject to all provisions of this article applicable to wholesalers.

Source: L. 64: p. 823, § 6. C.R.S. 1963: § 138-8-6. L. 90: (1) amended, p. 459, § 45, effective April 18. L. 93: (1) amended, p. 865, § 44, effective July 1, 1994. L. 2003: (1) amended, p. 2356, § 346, effective July 1, 2004. L. 2005: (1) amended, p. 908, § 5, effective June 2; (1) amended, p. 924, § 6, effective June 2.

Cross references: For the legislative declaration contained in the 2005 act amending subsection (1), see section 1 of chapter 241, Session Laws of Colorado 2005.

39-28-107. Unstamped packages - tax collected - fines - subject to confiscation - tobacco tax enforcement cash fund - creation. (1) (a) Any package of cigarettes found at any place in this state without a stamp or imprint affixed thereto as provided in this article, unless such cigarettes are in the possession of a licensed wholesaler in the original unopened shipping package or in transit to such wholesaler, are declared to be contraband

goods and may be seized without a warrant by the department, its agents or employees, or by any peace officer in this state when directed or requested by the department to do so. Nothing in this section shall be construed to require the department to confiscate unstamped packages of cigarettes when it has reason to believe that the owner thereof is not willfully or intentionally evading the taxes imposed by the provisions of this article and section 21 of article X of the state constitution. The executive director may impose a civil penalty on any person, firm, limited liability company, partnership, or corporation for the purchase or possession of unstamped cigarettes, regardless of whether the cigarettes have been confiscated, in an amount that does not exceed twenty-five cents per cigarette purchased or possessed; except that the penalty shall not apply if the cigarettes are in the possession of a licensed wholesaler in the original unopened shipping package or in transit to such wholesaler. Any civil penalties received pursuant to this paragraph (a) shall be remitted to the state treasurer for deposit in the tobacco tax enforcement cash fund created in paragraph (b) of this subsection (1).

(b) There is hereby created in the state treasury the tobacco tax enforcement cash fund. The fund shall consist of moneys deposited therein pursuant to paragraph (a) of this subsection (1) and section 39-28.5-106 (4). The moneys in the fund shall be subject to annual appropriation by the general assembly to the department for the purpose of enforcing the provisions of this article and article 28.5 of this title. Any moneys not appropriated by the general assembly shall remain in the fund and shall not be transferred or revert to the general fund at the end of any fiscal year.

(c) The provisions of this section shall not apply to cigarettes purchased from a United States military exchange or commissary, so long as the cigarettes are not for resale in this state.

(2) Any cigarettes seized by virtue of the provisions of this section shall be confiscated, and the department shall sell such confiscated goods at a public sale to a licensed wholesaler to the best advantage of this state. The proceeds from such sale shall be remitted to the state treasurer and distributed as provided in section 39-28-110 (1). Such sale by the state shall not relieve the purchaser at such sale from paying the tax and stamping the articles so sold to him or her in the manner provided in this article. The act or omission of any officer, agent, or other person acting for or employed by any person, firm, limited liability company, partnership, or corporation shall be deemed to be the act or omission of such person, firm, limited liability company, partnership, or corporation, as well as his or her own.

Source: L. 64: p. 823, § 7. C.R.S. 1963: § 138-8-7. L. 90: (2) amended, p. 459, § 46, effective April 18. L. 2005: Entire section amended, p. 909, § 6, effective June 2; entire section amended, p. 924, § 7, effective June 2. L. 2009: (1) amended, (HB 09-1173), ch. 372, p. 2016, § 3, effective August 5. L. 2010: (1)(a) amended and (1)(c) added, (HB 10-1058), ch. 158, p. 543, § 1, effective August 11.

Cross references: For the legislative declaration contained in the 2005 act amending this section, see section 1 of chapter 241, Session Laws of Colorado 2005.

39-28-108. Penalty. (1) Any person, firm, limited liability company, partnership, or corporation or agent thereof who at retail sells or offers for sale, displays for sale, or possesses with intent to sell any cigarettes, the package of which does not bear the stamp, or an imprint or impression by a suitable metering machine approved by the department, evidencing the payment of the taxes imposed by this article and section 21 of article X of the state constitution, shall be punished as provided in section 39-21-118.

(2) (a) If a person neglects or refuses to make a return as required by this article, the executive director of the department shall impose a penalty of one hundred dollars.

(b) If a person fails to pay the tax in the time allowed for the discount in section 39-28-104 (1), a penalty equal to ten percent thereof plus one-half of one percent per month from the date when due, not to exceed eighteen percent in the aggregate, together with interest on such delinquent taxes at the rate computed under section 39-21-110.5, shall apply.

(c) In computing and assessing the penalty, penalty interest, and interest pursuant to paragraph (b) of this subsection (2), the executive director of the department may make an estimate, based upon such information as may be available, of the amount of taxes due for the period for which the taxpayer is delinquent.

Source: L. 64: p. 824, § 8. C.R.S. 1963: § 138-8-8. L. 81: (2) amended, p. 1868, § 15, effective June 8. L. 85: Entire section amended, p. 1262, § 24, effective January 1, 1986. L. 86: (2) amended, p. 1223, § 37, effective May 30. L. 87: (2) R&RE, p. 1466, § 2, effective April 16. L. 90: (1) amended, p. 459, § 47, effective April 18. L. 2005: (1) amended, p. 909, § 7, effective June 2; (1) amended, p. 925, § 8, effective June 2.

Cross references: For the legislative declaration contained in the 2005 act amending subsection (1), see section 1 of chapter 241, Session Laws of Colorado 2005.

39-28-109. Records - examination - returns. Each wholesaler shall keep and preserve complete and accurate records of all cigarettes purchased and sold by him in accordance with the provisions of section 39-21-113. Any nonresident wholesaler, authorized pursuant to section 39-28-106, shall make available to the department, in the city and county of Denver, said records or, in the alternative, shall bear the cost of examination by an agent authorized by the executive director of the department of revenue at the place where such books, accounts, and records are kept. Such cost shall consist of a charge of twenty-five dollars per diem for the period required to make such examination, with a minimum charge of seventy-five dollars. The department may investigate and examine the stock of cigarettes upon any premises where the same are possessed, stored, or sold for the purpose of determining whether the provisions of this article have been complied with. The records which the wholesaler keeps shall be of such kind and in such form as the department prescribes. Each wholesaler shall make a return to the department each month containing, among other things, the total number of packages of cigarettes sold by him during the preceding month and the tax due thereon, which return shall be upon forms prescribed and furnished by the department and shall be filed by the tenth day of the month following the month reported.

Source: L. 64: p. 824, § 9. C.R.S. 1963: § 138-8-9. L. 88: Entire section amended, p. 1339, § 3, effective July 1.

39-28-110. Distribution of tax collected. (1) All sums of money received and collected in payment of the tax imposed by the provisions of this article, except license fees received under section 39-28-102 and the moneys collected pursuant to section 39-28-103.5, shall be transmitted to the state treasurer who shall distribute the money as follows: Fifteen percent to the general fund, and eighty-five percent to the old age pension fund.

(2) All moneys received and collected in payment of the tax imposed pursuant to section 39-28-103.5 shall be transmitted to the state treasurer for deposit in the tobacco tax cash fund created in section 24-22-117, C.R.S.

Source: L. 64: p. 825, § 10. C.R.S. 1963: § 138-8-10. L. 2005: Entire section amended, p. 909, § 8, effective June 2; entire section amended, p. 925, § 9, effective June 2.

Cross references: (1) For the old age pension fund, see article XXIV of the state constitution and § 26-2-115; for distribution to local governments of an amount from income tax proceeds equal to the cigarette tax, see § 39-22-623.

(2) For the legislative declaration contained in the 2005 act amending this section, see section 1 of chapter 241, Session Laws of Colorado 2005.

39-28-111. Exempt sales. The sales of cigarettes to the United States government or any of its agencies, sales in interstate commerce, or transactions the taxation of which is

prohibited by the constitution of the United States are exempted from the provisions of this article. Such exempt sales shall be reported to the department with such information as the department shall require.

Source: L. 64: p. 825, § 11. C.R.S. 1963: § 138-8-11.

39-28-112. Taxation by cities and towns. No provision of this article shall be construed to prevent the imposing, levying, and collecting of any tax upon sales of cigarettes or upon the occupation or privilege of selling cigarettes by any city or town in this state, nor shall the provisions of this article be interpreted to affect any existing authority of local municipalities to impose a tax on cigarettes to be used for local and municipal purposes.

Source: L. 64: p. 825, § 13. C.R.S. 1963: § 138-8-13.

39-28-113. Provisions not applicable. The provisions of section 39-26-706 (1) (a), relating to exemption from the “Emergency Retail Sales Tax Act of 1935”, and section 39-26-706 (1) (b), relating to exemption from the use tax, shall not apply to or render inoperative the provisions of this article.

Source: L. 64: p. 826, § 14. C.R.S. 1963: § 138-8-14. L. 76: Entire section amended, p. 319, § 78, effective May 20. L. 2004: Entire section amended, p. 1047, § 20, effective July 1. L. 2005: Entire section amended, p. 781, § 73, effective June 1.

Cross references: For the “Emergency Retail Sales Tax Act of 1935”, see part 1 of article 26 of this title.

39-28-114. Prohibited acts - penalties. It is unlawful for any wholesaler to sell and distribute any cigarettes in this state without a license or without first affixing the stamp, imprint, or impression upon each package of cigarettes, as provided for in this article, or to willfully make any false or fraudulent return, or false statement on any return, or to willfully evade the payment of the tax, or any part thereof, as imposed by this article. Any wholesaler, or agent thereof, who willfully violates any provision of this article shall be punished as provided by section 39-21-118.

Source: L. 64: p. 826, § 15. C.R.S. 1963: § 138-8-15. L. 85: Entire section amended, p. 1262, § 25, effective January 1, 1986.

39-28-115. List of licensed wholesalers - published on web site. On or before December 31, 2009, the department shall publish on its web site a list of the names and addresses of all licensed wholesalers. The list shall be updated within seven days of any changes to the list.

Source: L. 2009: Entire section added, (HB 09-1173), ch. 372, p. 2017, § 4, effective August 5.

PART 2

TOBACCO ESCROW FUNDS

39-28-201. Legislative declaration. (1) The general assembly hereby finds, determines, and declares:

(a) That cigarette smoking presents serious public health concerns to the state and to the citizens of the state. The surgeon general has determined that smoking causes lung cancer, heart disease and other serious diseases, and that there are hundreds of thousands of

tobacco-related deaths in the United States each year. These diseases most often do not appear until many years after the person in question begins smoking.

(b) That cigarette smoking also presents serious financial concerns for the state. Under certain health-care programs, the state may have a legal obligation to provide medical assistance to eligible persons for health conditions associated with cigarette smoking, and those persons may have a legal entitlement to receive such medical assistance.

(c) That under these programs, the state pays millions of dollars each year to provide medical assistance for these persons for health conditions associated with cigarette smoking.

(d) That it is the policy of the state that financial burdens imposed on the state by cigarette smoking be borne by tobacco product manufacturers rather than by the state to the extent that such manufacturers either determine to enter into a settlement with the state or are found culpable by the courts.

(e) That on November 23, 1998, leading United States tobacco product manufacturers entered into a settlement agreement, entitled the "master settlement agreement," with the state. The master settlement agreement obligates these manufacturers, in return for a release of past, present and certain future claims against them as described therein, to pay substantial sums to the state, tied in part to their volume of sales; to fund a national foundation devoted to the interests of public health; and to make substantial changes in their advertising and marketing practices and corporate culture, with the intention of reducing underage smoking.

(f) That it would be contrary to the policy of the state if tobacco product manufacturers who determine not to enter into such a settlement could use a resulting cost advantage to derive large, short-term profits in the years before liability may arise without ensuring that the state will have an eventual source of recovery from them if they are proven to have acted culpably. It is thus in the interest of the state to require that such manufacturers establish a reserve fund to guarantee a source of compensation and to prevent such manufacturers from deriving large, short-term profits and then becoming judgment-proof before liability may arise.

Source: L. 99: Entire part added, p. 944, § 1, effective July 1.

39-28-202. Definitions. As used in this part 2:

(1) "Adjusted for inflation" means increased in accordance with the formula for inflation adjustment set forth in exhibit C to the master settlement agreement.

(2) "Affiliate" means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. Solely for purposes of this definition, the terms "owns," "is owned," and "ownership" mean ownership of an equity interest, or the equivalent thereof, of ten percent or more, and the term "person" means an individual, partnership, committee, association, corporation, or any other organization or group of persons.

(3) "Allocable share" means allocable share as that term is defined in the master settlement agreement.

(4) (a) "Cigarette" means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains:

(I) Any roll of tobacco wrapped in paper or in any substance not containing tobacco; or

(II) Tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or

(III) Any roll of tobacco wrapped in any substance containing tobacco that, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in subparagraph (I) of this paragraph (a).

(b) The term "cigarette" includes roll-your-own, i.e., any tobacco that, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes.

(c) For purposes of this definition of "cigarettes", 0.09 ounces of roll-your-own tobacco shall constitute one individual "cigarette".

(5) "Master settlement agreement" means the settlement agreement and related documents dated November 23, 1998, entered into by the state and leading United States tobacco product manufacturers and attached as exhibit A to the consent decree approved by the district court for the city and county of Denver on November 25, 1998, in civil action no. 97CV3432.

(6) "Qualified escrow fund" means an escrow arrangement with a federally or state chartered financial institution having no affiliation with any tobacco product manufacturer and having assets of at least one billion dollars, where such arrangement requires that such financial institution hold the escrowed funds' principal for the benefit of releasing parties and prohibits the tobacco product manufacturer placing the funds into escrow from using, accessing, or directing the use of the funds' principal except as consistent with section 39-28-203 (2).

(7) "Released claims" means released claims as that term is defined in the master settlement agreement.

(8) "Releasing parties" means releasing parties as that term is defined in the master settlement agreement.

(9) (a) "Tobacco product manufacturer" means an entity that, after July 1, 1999, directly and not exclusively through any affiliate:

(I) Manufactures anywhere cigarettes which the manufacturer intends to be sold in the United States, including cigarettes intended to be sold in the United States through an importer; provided, however, that an entity that manufactures cigarettes that it intends to be sold in the United States shall not be considered a tobacco product manufacturer under this paragraph (a) if:

(A) Such cigarettes are sold in the United States exclusively through an importer that is an original participating manufacturer, as that term is defined in the master settlement agreement, that will be responsible for the payments under the master settlement agreement with respect to such cigarettes as a result of the provisions of subsection II(mm) of the master settlement agreement and that pays the taxes specified in section II(z) of the master settlement agreement; and

(B) The manufacturer of such cigarettes does not market or advertise such cigarettes in the United States;

(II) Is the first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere that the manufacturer does not intend to be sold in the United States; or

(III) Becomes a successor of an entity described in subparagraph (I) or (II) of this paragraph (a).

(b) "Tobacco product manufacturer" does not include an affiliate of a tobacco product manufacturer unless such affiliate itself falls within subparagraphs (I) through (III) of paragraph (a) of this subsection (9).

(10) "Units sold" means the number of individual cigarettes sold in the state by the applicable tobacco product manufacturer, whether directly or through a distributor, retailer, or similar intermediary or intermediaries, during the year in question, as measured by excise taxes collected by the state on containers of roll-your-own tobacco, and on packs of cigarettes bearing the excise tax stamp of the state. The department shall promulgate such rules as are necessary to ascertain the amount of state excise tax paid on the cigarettes of such tobacco product manufacturer for each year.

Source: L. 99: Entire part added, p. 945, § 1, effective July 1.

39-28-203. Requirements. Any tobacco product manufacturer selling cigarettes to consumers within the state, whether directly or through a distributor, retailer, or similar intermediary or intermediaries, after July 1, 1999, shall either:

(1) Become a participating manufacturer as that term is defined in section II(jj) of the master settlement agreement and generally perform its financial obligations under the master settlement agreement; or

(2) (a) Place into a qualified escrow fund by April 15 of the year following the year in question the following amounts as such amounts are adjusted for inflation:

- (I) 1999: \$.0094241 per unit sold after July 1, 1999;
- (II) 2000: \$.0104712 per unit sold;
- (III) For each of 2001 and 2002: \$.0136125 per unit sold;
- (IV) For each of 2003 through 2006: \$.0167539 per unit sold;
- (V) For each of 2007 and each year thereafter: \$.0188482 per unit sold.

(b) A tobacco product manufacturer that places funds into escrow pursuant to paragraph (a) of this subsection (2) shall receive the interest or other appreciation on such funds as earned. Such funds themselves shall be released from escrow only under the following circumstances:

(I) To pay a judgment or settlement on any released claim brought against such tobacco product manufacturer by the state or any releasing party located or residing in the state. Funds shall be released from escrow under this subparagraph (I):

(A) In the order in which they were placed into escrow; and

(B) Only to the extent and at the time necessary to make payments required under such judgment or settlement;

(II) (A) To the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow on account of units sold in the state in a particular year was greater than the master settlement agreement payments, as determined pursuant to section IX(i) of that agreement including after final determination of all adjustments, that such manufacturer would have been required to make on account of such units sold had it been a participating manufacturer, the excess shall be released from escrow and revert back to such tobacco product manufacturer;

(B) If Senate Bill 04-182, enacted at the second regular session of the sixty-fourth general assembly, or any portion of the amendment to sub-subparagraph (A) of this subparagraph (II) made by Senate Bill 04-182 is held by a court of competent jurisdiction to be unconstitutional, then sub-subparagraph (A) of this subparagraph (II) shall be deemed to be repealed in its entirety. If this paragraph (b) shall thereafter be held by a court of competent jurisdiction to be unconstitutional, then Senate Bill 04-182 shall be deemed repealed, and sub-subparagraph (A) of this subparagraph (II) shall be restored as if no such amendments had been made. Neither any holding of unconstitutionality nor the repeal of sub-subparagraph (A) of this subparagraph (II) shall affect, impair, or invalidate any other portion of this section, and such remaining portions of this section shall at all times continue in full force and effect.

(III) To the extent not released from escrow under subparagraph (I) or (II) of this paragraph (b), funds shall be released from escrow and revert back to such tobacco product manufacturer twenty-five years after the date on which the funds were placed into escrow.

(c) (I) Each tobacco product manufacturer that elects to place funds into escrow pursuant to this subsection (2) shall annually certify to the attorney general that it is in compliance with this subsection (2). The attorney general may bring a civil action on behalf of the state against any tobacco product manufacturer that fails to place into escrow the funds required under this section. Any tobacco product manufacturer that fails in any year to place into escrow the funds required under this section shall:

(A) Be required within fifteen days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a violation of this subsection (2), may impose a civil penalty, to be paid to the general fund of the state, in an amount not to exceed five percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed one hundred percent of the original amount improperly withheld from escrow;

(B) In the case of a knowing violation, be required within fifteen days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a knowing violation of this subsection (2), may impose a civil penalty, to be paid to the general fund of the state, in an amount not to exceed fifteen percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed three hundred percent of the original amount improperly withheld from escrow; and

(C) In the case of a second or subsequent knowing violation, be prohibited from selling cigarettes to consumers within the state, whether directly or through a distributor, retailer, or similar intermediary or intermediaries, for a period not to exceed two years.

(II) Each failure to make an annual deposit required under this section shall constitute a separate violation.

Source: L. 99: Entire part added, p. 947, § 1, effective July 1. L. 2004: (2)(b)(II) amended, p. 404, § 1, effective April 8.

PART 3

ADDITIONAL REQUIREMENTS FOR TOBACCO PRODUCT MANUFACTURERS AND STAMPING AGENTS

39-28-301. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) Violations of the tobacco escrow funds act threaten the integrity of the master settlement agreement, the fiscal soundness of the state, and the public health.

(b) Enacting procedural enhancements will aid the enforcement of the tobacco escrow funds act and thereby safeguard the master settlement agreement, the fiscal soundness of the state, and the public health.

(c) The provisions of this part 3 are not intended to and shall not be interpreted to amend the tobacco escrow funds act.

Source: L. 2003: Entire part added, p. 1752, § 1, effective May 14.

39-28-302. Definitions. As used in this part 3, unless the context otherwise requires:

(1) “Brand family” means all styles of cigarettes sold under the same trade mark and differentiated from one another by means of additional modifiers or descriptors, including, but not limited to, “menthol”, “lights”, “kings”, and “100s”, and includes any brand name, alone or in conjunction with any other word, trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or any other indicia of product identification identical or similar to, or identifiable with, a previously known brand of cigarettes.

(2) “Cigarette” has the same meaning as set forth in section 39-28-202 (4).

(3) “Department” means the department of revenue.

(4) “Master settlement agreement” has the same meaning as set forth in section 39-28-202 (5).

(5) “Nonparticipating manufacturer” means any tobacco product manufacturer that is not a participating manufacturer.

(6) “Participating manufacturer” has the same meaning as set forth in section II (jj) of the master settlement agreement and all amendments thereto.

(7) “Qualified escrow fund” has the same meaning as set forth in section 39-28-202 (6).

(8) “Stamping agent” means a person that is authorized to affix tax stamps to packages or other containers of cigarettes or tobacco products under section 39-28-104 or a person that is required to pay the tobacco products tax imposed pursuant to section 39-28.5-102 on roll-your-own tobacco for cigarettes.

(9) “Tobacco control special fund” means a separate fund created by this part 3, the revenues of which do not pass through the general fund, and that will be used by the department for the enforcement of this part 3 and the tobacco escrow funds act.

(10) “Tobacco escrow funds act” or “act” means those provisions that are referred to as the model act in the master settlement agreement and that are codified as part 2 of this article.

(11) “Tobacco product manufacturer” has the same meaning as set forth in section 39-28-202 (9).

(12) “Units sold” has the same meaning as set forth in section 39-28-202 (10).

Source: L. 2003: Entire part added, p. 1752, § 1, effective May 14.

39-28-303. Certifications - directory - tax stamps. (1) **Certification.** (a) Every tobacco product manufacturer whose cigarettes are sold in this state whether directly or through a distributor, retailer, or similar intermediary or intermediaries shall execute and deliver in the manner prescribed by the department a certification to the executive director of the department no later than the thirtieth day of April each year certifying under penalty of perjury that, as of the date of such certification, the tobacco product manufacturer either is a participating manufacturer or is in full compliance with the tobacco escrow funds act and all implementing regulations.

(b) A participating manufacturer shall include in its certification a list of its brand families. The participating manufacturer shall update the list thirty days prior to any addition to or modification of its brand families by executing and delivering a supplemental certification to the department.

(c) A nonparticipating manufacturer shall include in its certification a complete list of all of its brand families, and the list shall:

(I) Separately list:

(A) Brand families of cigarettes and the number of units sold for each brand family that were sold in the state during the preceding calendar year; and

(B) All of the nonparticipating manufacturer's brand families that have been sold in the state at any time during the current calendar year;

(II) Indicate by an asterisk, any brand family sold in the state during the preceding calendar year that is no longer being sold in the state as of the date of such certification; and

(III) Identify by name and address any other manufacturer of such brand families in the preceding calendar year.

(d) A nonparticipating manufacturer shall update a certification thirty days prior to any addition to or modification of its brand families by executing and delivering a supplemental certification to the department.

(e) A certification of a nonparticipating manufacturer shall further certify:

(I) That the nonparticipating manufacturer is registered to do business in the state or has appointed a resident agent for service of process and provided notice thereof as required by section 39-28-304;

(II) That the nonparticipating manufacturer has:

(A) Established and continues to maintain a qualified escrow fund, as defined in section 39-28-202 (6); and

(B) Executed a qualified escrow agreement that has been reviewed and approved by the attorney general and that governs the qualified escrow fund;

(III) That the nonparticipating manufacturer is in full compliance with the tobacco escrow funds act, this part 3, and any rules promulgated pursuant to the tobacco escrow funds act or this part 3; and

(IV) That information pertaining to the qualified escrow fund, including:

(A) The name, address, and telephone number of the financial institution where the nonparticipating manufacturer has established the qualified escrow fund required by section 39-28-203 and all rules promulgated thereto;

(B) The account number of the qualified escrow fund and sub-account number for the state of Colorado;

(C) The amount the nonparticipating manufacturer placed in the fund for cigarettes sold in the state during the preceding calendar year, the date and amount of each deposit, and such evidence or verification as may be deemed necessary by the department to confirm the foregoing; and

(D) The amounts of and dates of any withdrawal or transfer of funds the nonparticipating manufacturer made at any time from the fund or from any other qualified escrow fund into which it ever made escrow payments pursuant to the tobacco escrow funds act and all rules promulgated thereto.

(f) (I) A tobacco product manufacturer may not include a brand family in its certification unless:

(A) In the case of a participating manufacturer, the participating manufacturer affirms that the brand family is to be deemed to be its cigarettes for purposes of calculating its

payments under the master settlement agreement for the relevant year in the volume and shares determined pursuant to the master settlement agreement; and

(B) In the case of a nonparticipating manufacturer, the nonparticipating manufacturer affirms that the brand family is to be deemed to be its cigarettes for purposes of the tobacco escrow funds act.

(II) Nothing in this paragraph (f) shall be construed as limiting or otherwise affecting the state's right to maintain that a brand family constitutes cigarettes of a different tobacco product manufacturer for purposes of calculating payments under the master settlement agreement or for purposes of part 2 of this article.

(g) Tobacco product manufacturers shall maintain all invoices and documentation of sales and other such information relied upon for such certification for a period of five years, unless otherwise required by law to maintain them for a greater period.

(2) **Directory of cigarettes approved for stamping and sale.** (a) Not later than June 1, 2003, the department shall develop and publish on its web site a directory listing all tobacco product manufacturers that have provided current and accurate certifications conforming to the requirements of subsection (1) of this section and all brand families that are listed in such certifications; except that:

(I) The department shall not include or retain in the directory the name or brand families of any nonparticipating manufacturer that has failed to provide the required certification or whose certification the department determines is not in compliance with paragraphs (c) and (d) of subsection (1) of this section, unless the department has determined that the violation has been cured to the satisfaction of the department.

(II) Neither a tobacco product manufacturer nor brand family shall be included or retained in the directory if the executive director of the department concludes that:

(A) In the case of a nonparticipating manufacturer, any escrow payment required pursuant to the tobacco escrow funds act for any period for any brand family, whether or not listed by the nonparticipating manufacturer, has not been fully paid into a qualified escrow fund governed by a qualified escrow agreement that has been approved by the attorney general; or

(B) Any outstanding final judgment, including interest thereon, for violations of the tobacco escrow funds act has not been fully satisfied for the brand family and the manufacturer.

(b) The department shall update the directory as necessary in order to correct mistakes and to add or remove a tobacco product manufacturer or brand family to keep the directory in conformity with the requirements of this part 3.

(c) The department shall transmit by electronic mail or other practicable means to each stamping agent notice of any addition to or removal from the directory of a tobacco product brand manufacturer or brand family. In addition, the department shall transmit by electronic mail or other practical means to each stamping agent notice of the potential removal from the directory of a tobacco product brand manufacturer or brand family three calendar days before the tobacco product brand manufacturer or brand family is actually removed from the directory. Unless otherwise provided by agreement between a stamping agent and a tobacco product manufacturer, a stamping agent shall be entitled to a refund from a tobacco product manufacturer of any money paid by the stamping agent to the tobacco product manufacturer for any cigarettes of the tobacco product manufacturer still held by the stamping agent on the date of notice by the department of the removal from the directory of the tobacco product manufacturer or the brand family of the cigarettes. The department shall not restore to the directory a tobacco product manufacturer or a brand family until the tobacco product manufacturer has paid the stamping agent any refund due.

(d) Every stamping agent shall provide and update as necessary an electronic mail address to the department for the purpose of receiving any notifications that may be required by this part 3.

(3) **Prohibition against stamping or sale of cigarettes not in the directory.** It shall be unlawful for any person to:

(a) Affix a stamp to a package or other container of cigarettes of a tobacco product manufacturer or brand family not included in the directory; or

(b) Sell, offer, or possess for sale in this state cigarettes of a tobacco product manufacturer or brand family not included in the directory.

Source: L. 2003: Entire part added, p. 1753, § 1, effective May 14. L. 2011: (1)(a) and IP(2)(a) amended, (HB 11-1303), ch. 264, p. 1176, § 94, effective August 10.

39-28-304. Agent for service of process. (1) A nonresident or foreign nonparticipating manufacturer that has not registered to do business in the state as a foreign corporation or business entity shall, as a condition precedent to having its brand families listed or retained in the directory, appoint and continually engage without interruption the services of an agent in the state to act as an agent for the service of process on whom all process, and any action or proceeding against the nonparticipating manufacturer concerning or arising out of the enforcement of this part 3 and the tobacco escrow funds act, may be served in any manner authorized by law. Such service shall constitute legal and valid service of process on the nonparticipating manufacturer. The nonparticipating manufacturer shall provide the name, address, phone number, and proof of the appointment and availability of the agent to and to the satisfaction of the executive director of the department and the attorney general.

(2) A nonparticipating manufacturer shall provide notice to the executive director of the department and the attorney general at least thirty calendar days prior to termination of the authority of an agent and shall further provide proof to the satisfaction of the attorney general of the appointment of a new agent at least five calendar days prior to the termination of an existing agent appointment. In the event an agent terminates an agency appointment, the nonparticipating manufacturer shall notify the executive director and the attorney general of the termination within five calendar days and shall include proof to the satisfaction of the attorney general of the appointment of a new agent.

(3) A nonparticipating manufacturer whose products are sold in this state without appointing or designating an agent as herein required shall be deemed to have appointed the secretary of state as the agent and may be proceeded against in the courts of this state by service of process upon the secretary of state. However, the appointment of the secretary of state as the agent shall not satisfy the condition precedent to having the nonparticipating manufacturer's brand families listed or retained in the directory.

Source: L. 2003: Entire part added, p. 1757, § 1, effective May 14.

39-28-305. Reporting of information - escrow installments. (1) **Reporting by stamping agents.** Not later than twenty days after the end of each month, each stamping agent shall submit to the department such information as the department requires to facilitate compliance with this part 3, including, but not limited to, a list by brand family of the total number of cigarettes, or in the case of roll-your-own, the equivalent stick count for which the stamping agent affixed stamps during the previous calendar month or otherwise paid the tax due for such cigarettes. The stamping agent shall maintain and make available to the department all invoices and documentation of sales of all nonparticipating manufacturer cigarettes and any other information relied upon in reporting to the department for a period of five years.

(2) **Disclosure of information.** The department is authorized to disclose to the attorney general any information received under this part 3 and requested by the attorney general for purposes of determining compliance with and enforcing the provisions of this part 3. The department and the attorney general shall share with each other the information received under this part 3 and may share the information with other federal, state, or local agencies only for purposes of enforcement of this part 3, the tobacco escrow funds act, or corresponding laws of other states.

(3) **Verification of qualified escrow fund.** The attorney general may require at any time from a nonparticipating manufacturer, proof from the financial institution in which the manufacturer has established a qualified escrow fund for the purpose of compliance with the tobacco escrow funds act of the amount of money in the fund, exclusive of interest, being

held on behalf of the state, the dates of deposits, and the dates and amounts of all withdrawals from such fund.

(4) **Requests for additional information.** In addition to the information required to be submitted pursuant to regulation number 39-28-202 (3) and (4) or any successor rule of the department (1 CCR 201-7), the department or the attorney general may require a stamping agent, distributor, or tobacco product manufacturer to submit any additional information, including, but not limited to, samples of the packaging or labeling of each brand family, as is necessary to enable the department or the attorney general to determine whether a tobacco product manufacturer is in compliance with this part 3.

(5) **Quarterly escrow installments.** To promote compliance with the provisions of this part 3, the department may promulgate rules requiring a tobacco product manufacturer subject to the requirements of section 39-28-303 (1) (c) to make the escrow deposits required in quarterly installments during the year in which the sales covered by such deposits are made. The department may require production of information sufficient to enable the department to determine the adequacy of the amount of the installment deposit.

Source: L. 2003: Entire part added, p. 1758, § 1, effective May 14.

39-28-306. Penalties and other remedies. (1) **License revocation and civil penalty.** In addition to or in lieu of any other civil or criminal remedy provided by law, upon a determination that a stamping agent has violated section 39-28-303 (3) or any rule adopted pursuant thereto, the executive director of the department may revoke or suspend the license of any stamping agent in the manner provided by sections 39-28-102 (1) and 39-28.5-104. Each stamp affixed and each offer to sell cigarettes in violation of section 39-28-303 (3) shall constitute a separate violation. For each violation, the executive director may also impose a civil penalty in an amount not to exceed the greater of five hundred percent of the retail value of the cigarettes sold or five thousand dollars upon a determination of a violation of section 39-28-303 (3) or any rules adopted pursuant thereto.

(2) **Contraband and seizure.** Any cigarettes that have been sold, offered for sale, or possessed for sale in this state in violation of section 39-28-303 (3) shall be deemed a contraband article as defined by section 16-13-502 (1), C.R.S. The cigarettes shall be subject to seizure and forfeiture as provided in the "Colorado Contraband Forfeiture Act", part 5 of article 13 of title 16, C.R.S., and any cigarettes so seized and forfeited shall be destroyed and not resold.

(3) **Injunction.** The attorney general, on behalf of the department, may seek an injunction to restrain a threatened or actual violation of section 39-28-303 (3) or 39-28-305 (1) or (4) by a stamping agent and to compel the stamping agent to comply with those statutory provisions.

(4) **Unlawful sale and distribution.** It is unlawful for a person to sell, distribute, acquire, hold, own, possess, transport, import, or cause to be imported cigarettes that the person knows or should know are intended for distribution or sale in the state in violation of section 39-28-303 (3). A violation of this section is a class 2 misdemeanor.

(5) **Colorado consumer protection act.** A person who violates section 39-28-303 (3) engages in an unfair and deceptive trade practice in violation of section 6-1-105, C.R.S.

(6) **Disgorgement of profits for violations of this part 3.** If a court determines that a person has violated this part 3, the court shall order any profits, gain, gross receipts, or other benefit from the violation to be disgorged and paid to the state treasurer for deposit into the tobacco control special fund, which is hereby created. Unless otherwise expressly provided, the remedies or penalties provided by this part 3 are cumulative to each other and to the remedies or penalties available under all other laws of this state.

Source: L. 2003: Entire part added, p. 1759, § 1, effective May 14.

39-28-307. Miscellaneous provisions. (1) **Notice and review of determination.** A determination of the department to not list or to remove from the directory a brand family

or tobacco product manufacturer shall be subject to review in the manner prescribed by the "State Administrative Procedure Act", article 4 of title 24, C.R.S.

(2) **Applicants for licenses.** No stamping agent for a license shall be issued a license or granted a renewal of a license unless the stamping agent has certified in writing, under penalty of perjury, that the stamping agent has in the past and will continue to comply fully with this part 3. No applicant for a license shall be issued a license unless the applicant has certified in writing, under penalty of perjury, that the stamping agent will fully comply with this section.

(3) Repealed.

(4) **Promulgation of rules.** The department may promulgate rules necessary to effect the purposes of this statute. The department shall promulgate such rules in accordance with article 4 of title 24, C.R.S.

(5) **Recovery of costs and fees by attorney general.** In any action brought by the state to enforce this part 3, the state shall be entitled to recover the costs of investigation, expert witness fees, costs of the action, and reasonable attorney fees.

(6) **Construction and severability.** If a court of competent jurisdiction finds that the provisions of this part 3 and of the tobacco escrow funds act conflict and cannot be harmonized, then the provisions of the tobacco escrow funds act shall control. If any provision of this part 3 causes the tobacco escrow funds act to no longer constitute a qualifying or model statute, as those terms are defined in the master settlement agreement, then that portion of this part 3 shall not be valid. If any provision of this part 3 is for any reason held to be invalid, unlawful, or unconstitutional, the decision shall not affect the validity of the remaining portions of this part 3 or any part thereof.

Source: L. 2003: Entire part added, p. 1759, § 1, effective May 14. L. 2011: (3) repealed, (HB 11-1303), ch. 264, p. 1176, § 95, effective August 10.

ARTICLE 28.5

Tax on Tobacco Products

Cross references: For the constitutional provision that establishes limitations on spending, the imposition of taxes, and the incurring of debt, see § 20 of article X of the state constitution.

39-28.5-101.	Definitions.		- civil penalty.
39-28.5-102.	Tax levied.	39-28.5-107.	When credit may be obtained for tax paid.
39-28.5-102.5.	Tax levied - state constitution.	39-28.5-108.	Distribution of tax collected.
39-28.5-103.	Exempt sales.	39-28.5-109.	Taxation by cities and towns.
39-28.5-104.	Licensing required - rules - fines.	39-28.5-110.	Prohibited acts - penalties.
39-28.5-104.5.	Licensing of distributing sub-contractors - rules - fines.	39-28.5-111.	Federal requirements - affixing labels - penalty.
39-28.5-105.	Books and records to be preserved.	39-28.5-112.	List of licensed distributors - published on web site.
39-28.5-106.	Returns and remittance of tax		

39-28.5-101. Definitions. As used in this article, unless the context otherwise requires:

(1) "Department" means the department of revenue.

(1.5) "Distributing subcontractor" means every person, firm, limited liability company, partnership, or corporation who purchases tobacco products from a distributor for resale to a retailer in this state.

(2) "Distributor" means every person who first receives tobacco products in this state, every person who sells tobacco products in this state who is primarily liable for the tobacco products tax on such products, and every person who first sells or offers for sale in this state tobacco products imported into this state from any other state or country.

(3) "Manufacturer's list price" means the invoice price for which a manufacturer or supplier sells a tobacco product to a distributor exclusive of any discount or other reduction.

(4) "Sale" means any transfer, exchange, or barter, in any manner or by any means

whatsoever, for a consideration, including all sales made by any person. The term includes a gift by a person engaged in the business of selling tobacco products, for advertising, as a means of evading the provisions of this article or for any other purposes whatsoever.

(5) "Tobacco products" means cigars, cheroots, stogies, periques, granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco, snuff, snuff flour, cavendish, plug and twist tobacco, fine-cut and other chewing tobaccos, shorts, refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or for smoking in a pipe or otherwise, or both for chewing and smoking, but does not include cigarettes which are taxed separately pursuant to article 28 of this title.

Source: **L. 86:** Entire article added, p. 1113, § 13, effective July 1. **L. 2005:** (1.5) added, p. 721, § 5, effective June 1.

39-28.5-102. Tax levied. (1) There is levied and shall be collected a tax upon the sale, use, consumption, handling, or distribution of all tobacco products in this state at the rate of twenty percent of the manufacturer's list price of such tobacco products. Such tax shall be imposed at the time the distributor:

(a) Brings, or causes to be brought, into this state from without the state tobacco products for sale;

(b) Makes, manufactures, or fabricates tobacco products in this state for sale in this state; or

(c) Ships or transports tobacco products to retailers in this state to be sold by those retailers.

Source: **L. 86:** Entire article added, p. 1114, § 13, effective July 1.

Cross references: For the tax on cigarettes, see article 28 of this title.

ANNOTATION

The tax imposed by this section does not violate the commerce clause of the U.S. Constitution. A state tax impermissibly discriminates against interstate commerce if it is facially discriminatory, has a discriminatory purpose, or has the effect of unduly burdening interstate commerce. A tax is discriminatory if it taxes out-of-state transactions, entities, or products at

a higher rate or if it exempts in-state transactions, entities, or products from an otherwise uniform tax. The tax imposed by this section is higher the later in the distribution network the event triggering the tax occurs, but this does not render the tax discriminatory. *McLane W., Inc. v. Dept. of Rev.*, 126 P.3d 211 (Colo. App. 2005).

39-28.5-102.5. Tax levied - state constitution. Pursuant to section 21 of article X of the state constitution, there is levied, in addition to the tax levied pursuant to section 39-28.5-102, a tax on the sale, use, consumption, handling, or distribution of tobacco products by distributors, at a rate of twenty percent of the manufacturer's list price. The tax shall be paid to and collected by the department. The tax shall be imposed in the same manner as the tax described in section 39-28.5-102.

Source: **L. 2005:** Entire section added, p. 910, § 9, effective June 2; entire section added, p. 925, § 10, effective June 2.

Cross references: For the legislative declaration contained in the 2005 act enacting this section, see section 1 of chapter 241, Session Laws of Colorado 2005.

39-28.5-103. Exempt sales. The tax imposed by section 39-28.5-102 shall not apply with respect to any tobacco products which, under the constitution and laws of the United States, may not be made the subject of taxation by this state. Such exempt sales shall be reported to the department with such information as the department shall require.

Source: L. 86: Entire article added, p. 1114, § 13, effective July 1.

39-28.5-104. Licensing required - rules - fines. (1) It is unlawful for any person to engage in the business of a distributor of tobacco products at any place of business without first obtaining a license granted and issued by the department, which license shall be in effect until June 30 following the date of issue, unless sooner revoked. Such license shall be granted only to a person who owns or operates the place from which the person engages in the business of a distributor of tobacco products, and, if such business is operated in two or more separate places by any such person, a separate license for each place of business shall be required. Such license shall be renewed only upon timely application and payment of the required fee prior to expiration. Such licenses may be transferred in the discretion of and pursuant to the rules adopted by the department. The fee for a license shall be ten dollars per year, and such fee shall be credited to the general fund. Such fee shall be reduced at the rate of two dollars and fifty cents for each expired quarter of the license year. The department shall, on reasonable notice and after a hearing, suspend or revoke the license of any person violating any provision of this article, and no license shall be issued to such person within a period of two years thereafter. The department may share information on the names and addresses of persons who purchased tobacco products for resale with the department of public health and environment and county and district public health agencies. The department shall refuse to issue a new or renewal distributor license, and shall revoke a distributor's license, if the distributor owes the state any delinquent taxes administered by the department or interest thereon pursuant to this title that have been determined by law to be due and unpaid, unless the distributor has entered into an agreement approved by the department to pay the amount due. The department shall only issue a new or renewal distributor license to a distributor that has a current license issued pursuant to section 39-26-103.

(2) (Deleted by amendment, L. 2008, p. 184, § 3, effective August 5, 2008.)

Source: L. 86: Entire article added, p. 1114, § 13, effective July 1. L. 2001: Entire section amended, p. 580, § 5, effective May 30. L. 2004: Entire section amended, p. 247, § 2, effective August 4. L. 2005: (1) amended, p. 721, § 6, effective June 1. L. 2008: Entire section amended, p. 184, § 3, effective August 5. L. 2010: (1) amended, (HB 10-1422), ch. 419, p. 2123, § 179, effective August 11.

39-28.5-104.5. Licensing of distributing subcontractors - rules - fines. (1) It is unlawful for any person to engage in the business of a distributing subcontractor of tobacco products at any place of business without first obtaining a license granted and issued by the department, which license shall be in effect until June 30 following the date of issue, unless sooner revoked. Such license shall be granted only to a person who owns or operates the place from which the person engages in the business of a distributing subcontractor of tobacco products, and, if such business is operated in two or more separate places by any such person, a separate license for each place of business shall be required. Such license shall be renewed only upon timely application and payment of the required fee prior to expiration. Such licenses may be transferred in the discretion of and pursuant to the rules adopted by the department. The fee for a license shall be ten dollars per year, and such fee shall be credited to the wholesale and distributing subcontractor license fund created in section 39-28-102.5. Such fee shall be reduced at the rate of two dollars and fifty cents for each expired quarter of the license year. The department shall, on reasonable notice and after a hearing, suspend or revoke the license of any person violating any provision of this article, and no license shall be issued to such person within a period of two years thereafter. The department may share information on the names and addresses of persons who purchased tobacco products for resale with the department of public health and environment and county and district public health agencies. The department shall refuse to issue a new or renewal distributor license and shall revoke a distributor's license, if the distributor owes the state any delinquent taxes administered by the department or interest thereon pursuant to this title that have been determined by law to be due and unpaid, unless the distributor

has entered into an agreement approved by the department to pay the amount due. The department shall only issue a new or renewal distributing subcontractor license to a distributing subcontractor that has a current license issued pursuant to section 39-26-103.

(2) (Deleted by amendment, L. 2008, p. 185, § 4, effective August 5, 2008.)

Source: L. 2005: Entire section added, p. 721, § 7, effective June 1. L. 2008: Entire section amended, p. 185, § 4, effective August 5. L. 2010: (1) amended, (HB 10-1422), ch. 419, p. 2123, § 180, effective August 11.

39-28.5-105. Books and records to be preserved. (1) Every distributor shall keep at each licensed place of business complete and accurate records for that place of business, including itemized invoices of tobacco products held, purchased, manufactured, brought in or caused to be brought in from without the state, or shipped or transported to retailers in this state, and of all sales of tobacco products made, except sales to the ultimate consumer.

(2) These records shall show the names and addresses of purchasers, the inventory of all tobacco products on hand, and other pertinent papers and documents relating to the purchase, sale, or disposition of tobacco products.

(3) When a licensed distributor sells tobacco products exclusively to the ultimate consumer at the address given in the license, no invoice of those sales shall be required, but itemized invoices shall be made of all tobacco products transferred to other retail outlets owned or controlled by that licensed distributor. All books, records, and other papers and documents required by this section to be kept shall be preserved for a period of at least three years after the date of the documents, unless the department, in writing, authorizes their destruction or disposal at an earlier date.

(4) (a) Every retailer that is not also a licensed distributor shall keep at its place of business complete and accurate records to show that all tobacco products received by the retailer were purchased from a licensed distributor. The retailer shall provide a copy of such records to the department if so requested. The department may establish the acceptable form of such records.

(b) Any expenses incurred by the department related to enforcing paragraph (a) of this subsection (4) shall be paid from the tobacco settlement defense account, created in section 24-22-115 (2) (a), C.R.S., for the state fiscal year 2009-10, and from the tobacco tax enforcement cash fund created in section 39-28-107 (1) (b), for each state fiscal year thereafter.

Source: L. 86: Entire article added, p. 1115, § 13, effective July 1. L. 2009: (4) added, (HB 09-1173), ch. 372, p. 2017, § 5, effective August 5.

39-28.5-106. Returns and remittance of tax - civil penalty. (1) Every distributor shall file a return with the department each quarter. The return, which shall be upon forms prescribed and furnished by the department, shall contain, among other things, the total amount of tobacco products purchased by the distributor during the preceding quarter and the tax due thereon.

(2) Every distributor shall file a return with the department by the twentieth day of the month following the month reported and shall therewith remit the amount of tax due, less three and one-third percent of any sum so remitted that consists of tax collected before July 1, 2003, or on or after July 1, 2005, and less two and one-third percent of any sum so remitted that consists of tax collected on or after July 1, 2003, but before July 1, 2005, to cover the distributor's expense in the collection and remittance of said tax; except that no part of the tax imposed pursuant to section 39-28.5-102.5 and section 21 of article X of the state constitution shall be subject to the discount provided for in this subsection (2). If any distributor is delinquent in remitting said tax, other than in unusual circumstances shown to the satisfaction of the executive director of the department, the distributor shall not be allowed to retain any amounts to cover his or her expense in collecting and remitting said tax, and in addition the penalty imposed under section 39-28.5-110 (2) (b) shall apply.

(3) Distributors shall electronically remit tax payments due pursuant to this article and section 21 of article X of the state constitution to the department. The department may require distributors to file tax returns electronically. The department shall promulgate rules governing electronic payment and filing.

(4) (a) Any person, firm, limited liability company, partnership, or corporation, other than a distributor, in possession of tobacco products for which taxes have not otherwise been remitted pursuant to this section shall be liable and responsible for the uncollected tax that is levied pursuant to section 39-28.5-102 and section 21 of article X of the state constitution on behalf of the distributor who failed to pay the tax. The person or entity shall make the payment to the department within thirty days of first taking possession of the tobacco product. The department shall establish a form to be used for remittance of the payment. The department shall remit the proceeds it receives pursuant to this paragraph (a) to the state treasurer for distribution as follows:

(I) For all moneys received and collected in payment of the tax imposed pursuant to section 39-28.5-102, fifteen percent shall be credited to the tobacco tax enforcement cash fund created in section 39-28-107 (1) (b), and eighty-five percent shall be credited to the old age pension fund; and

(II) All moneys received and collected in payment of the tax imposed pursuant to section 39-28.5-102.5 shall be credited to the tobacco tax cash fund created in section 24-22-117, C.R.S.

(b) The executive director of the department may impose a civil penalty on any person, firm, limited liability company, partnership, or corporation in possession of tobacco products that fails to make a payment required pursuant to paragraph (a) of this subsection (4) or who is a distributor by virtue of being the first person who receives the tobacco products in the state and who fails to make a payment required pursuant to this section in an amount that does not exceed five hundred percent of such payment. Any moneys received pursuant to this paragraph (b) shall be remitted to the state treasurer for deposit in the tobacco tax enforcement cash fund created in section 39-28-107 (1) (b).

Source: **L. 86:** Entire article added, p. 1115, § 13, effective July 1. **L. 87:** (2) amended, p. 1467, § 3, effective April 16. **L. 2003:** (2) amended, p. 2637, § 5, effective June 5. **L. 2005:** (2) amended and (3) added, p. 910, § 10, effective June 2; (2) amended and (3) added, p. 925, § 11, effective June 2. **L. 2009:** (4) added, (HB 09-1173), ch. 372, p. 2018, § 6, effective August 5.

Cross references: For the legislative declaration contained in the 2005 act amending subsection (2) and enacting subsection (3), see section 1 of chapter 241, Session Laws of Colorado 2005.

39-28.5-107. When credit may be obtained for tax paid. (1) Where tobacco products, upon which the tax imposed by this article has been reported and paid, are shipped or transported by the distributor to retailers without the state to be sold by those retailers or are returned to the manufacturer by the distributor or destroyed by the distributor, credit of such tax may be made to the distributor in accordance with regulations prescribed by the department.

(2) (a) Credit shall be given by the department to a distributor for all taxes levied pursuant to this article and section 21 of article X of the state constitution and paid pursuant to the provisions of this article that are bad debts. Such credit shall offset taxes levied pursuant to this article and section 21 of article X of the state constitution and paid pursuant to the provisions of this article only. No credit shall be given unless the bad debt has been charged off as uncollectible on the books of the distributor. Subsequent to receiving the credit, if the distributor receives a payment for the bad debt, the distributor shall be liable to the department for the amount received and shall remit this amount in the next payment to the department under section 39-28.5-106.

(b) Any claim for a bad debt credit under this subsection (2) shall be supported by all of the following:

(I) A copy of the original invoice issued by the distributor;

(II) Evidence that the tobacco products described in the invoice were delivered to the person who ordered them; and

(III) Evidence that the person who ordered and received the tobacco products did not pay the distributor for them and that the distributor used reasonable collection practices in attempting to collect the debt.

(c) If credit is given to a distributor for a bad debt, the person who ordered and received the tobacco products but did not pay the distributor for them shall be liable in an amount equal to the credit for the tax imposed in this article on the tobacco products. Subsequent to receiving the credit, if the distributor receives a payment for the bad debt and the distributor makes a payment to the department, the amount of taxes owed by such person shall be reduced by the amount paid to the department.

(d) As used in this subsection (2), "bad debt" means the taxes attributable to any portion of a debt that is related to a sale of tobacco products subject to tax under this article, that is not otherwise deductible or excludable, that has become worthless or uncollectible in the time after the tax has been paid pursuant to section 39-28.5-106, and that is eligible to be claimed as a deduction pursuant to section 166 of the federal "Internal Revenue Code of 1986", as amended. A bad debt shall not include any interest on the wholesale price of tobacco products, uncollectible amounts on property that remain in the possession of the distributor until the full purchase price is paid, expenses incurred in attempting to collect any account receivable or any portion of the debt recovered, an account receivable that has been sold to a third party for collection, or repossessed property.

Source: L. 86: Entire article added, p. 1115, § 13, effective July 1. L. 2004: Entire section amended, p. 266, § 2, effective August 4. L. 2005: (2)(a) amended, p. 910, § 11, effective June 2; (2)(a) amended, p. 926, § 12, effective June 2.

Cross references: For the legislative declaration contained in the 2005 act amending subsection (2)(a), see section 1 of chapter 241, Session Laws of Colorado 2005.

39-28.5-108. Distribution of tax collected. (1) All sums of money received and collected in payment of the tax imposed by the provisions of this article, except license fees received under section 39-28.5-104 and the moneys collected pursuant to section 39-28.5-102.5, shall be transmitted to the state treasurer, who shall distribute such money as follows: Fifteen percent to the general fund and eighty-five percent to the old age pension fund.

(2) All moneys received and collected in payment of the tax imposed pursuant to section 39-28.5-102.5 and section 21 of article X of the state constitution shall be transmitted to the state treasurer for deposit in the tobacco tax cash fund created in section 24-22-117, C.R.S.

Source: L. 86: Entire article added, p. 1115, § 13, effective July 1. L. 2005: Entire section amended, p. 911, § 12, effective June 2; entire section amended, p. 926, § 13, effective June 2.

Cross references: For the legislative declaration contained in the 2005 act amending this section, see section 1 of chapter 241, Session Laws of Colorado 2005.

39-28.5-109. Taxation by cities and towns. No provision of this article shall be construed to prevent the imposing, levying, and collecting of any tax upon sales of tobacco products or upon the occupation or privilege of selling such products by any city or town in this state, nor shall the provisions of this article be interpreted to affect any existing authority of local municipalities to impose a tax on tobacco products to be used for local and municipal purposes.

Source: L. 86: Entire article added, p. 1115, § 13, effective July 1.

39-28.5-110. Prohibited acts - penalties. (1) It is unlawful for any distributor to sell and distribute any tobacco products in this state without a license as required in section

39-28.5-104, or to willfully make any false or fraudulent return or false statement on any return, or to willfully evade the payment of the tax, or any part thereof, as imposed by this article. Any distributor or agent thereof who willfully violates any provision of this article shall be punished as provided by section 39-21-118.

(2) (a) If a person neglects or refuses to make a return as required by this article and no amount of tax is due, the executive director of the department shall impose a penalty in the amount of twenty-five dollars.

(b) If a person fails to pay the tax in the time allowed in section 39-28.5-106 (2), a penalty equal to ten percent of such tax plus one-half of one percent per month from the date when due, not to exceed eighteen percent in the aggregate, together with interest on such delinquent taxes at the rate computed under section 39-21-110.5, shall apply.

(c) In computing and assessing the penalty, penalty interest, and interest pursuant to paragraph (b) of this subsection (2), the executive director of the department may make an estimate, based upon such information as may be available, of the amount of taxes due for the period for which the taxpayer is delinquent.

Source: L. 86: Entire article added, p. 1116, § 13, effective July 1. **L. 87:** (2) R&RE, p. 1467, § 4, effective April 16.

39-28.5-111. Federal requirements - affixing labels - penalty. (1) No person shall import into this state any tobacco product that violates any federal requirement for the placement of labels, warnings, or other information, including health hazards, required to be placed on the container or individual package.

(2) No person shall sell or offer to sell any tobacco product unless the package or container of the tobacco product complies with all federal tax laws, federal trademark and copyright laws, and federal laws regarding the placement of labels, warnings, or any other information upon a package or container of tobacco products.

(3) No person shall sell or offer to sell any tobacco product if the package or container is marked as manufactured for use outside of the United States or if any label or language has been altered from the manufacturer's original packaging and labeling to conceal the fact that the package or container of tobacco products was manufactured for use outside of the United States.

(4) (a) No person shall affix a stamp, label, or decal on a package or container of tobacco products to conceal the fact that the package or container of tobacco products was manufactured for use outside of the United States.

(b) No person shall sell or offer to sell any tobacco product on which a stamp, label, or decal was affixed to conceal the fact that the package or container of tobacco products was manufactured for use outside of the United States.

(5) The violation of any provision of this section is a class 1 misdemeanor.

(6) (a) Any package or container of tobacco products found at any place in this state that is marked for use outside of the United States is declared to be contraband goods and may be seized without a warrant by the department, its agents or employees, or by any peace officer in this state when directed or requested by the department to do so. Nothing in this section shall be construed to require the department to confiscate packages or containers of tobacco products that are so marked when it has reason to believe that the owner possesses the tobacco products for personal use and not for resale.

(b) Any tobacco products seized by virtue of the provisions of this subsection (6) shall be confiscated, and the department shall destroy such confiscated goods.

Source: L. 99: Entire section added, p. 93, § 2, effective March 24.

Cross references: For the classification and penalty provisions for class 1 misdemeanors, see § 18-1.3-501.

ANNOTATION

The state’s ability to declare packages of cigarettes marked in compliance with the federal packaging requirements as contraband is not intrusive on the advertising or promotion of these cigarettes and is, therefore, not precluded by the supremacy clause. *Premium Tobacco Stores, Inc. v. Fisher*, 51 F. Supp.2d 1099 (D. Colo. 1999).

Plaintiff not likely to prevail on equal protection challenge of this statute. Reviewing the statute under the rational basis test, the state’s desire to curb youth smoking and to shift the health-related costs of smoking onto the smoking public are legitimate governmental objectives. *Premium Tobacco Stores, Inc. v. Fisher*, 51 F. Supp.2d 1099 (D. Colo. 1999).

Plaintiff not likely to prevail on contract clause challenge of this statute. The state has demonstrated a significant and legitimate public purpose for the prohibition against repatriated tobacco products in the health and cost shifting goals of the master settlement agreement, reached between various states and the tobacco companies, which are protected by this statute. Additionally, the state’s adjustment of the right to sell a product deemed dangerous to the health of its citizenry by prohibiting the further sale and distribution of that product is appropriate to the public purpose. *Premium Tobacco Stores, Inc. v. Fisher*, 51 F. Supp.2d 1099 (D. Colo. 1999).

39-28.5-112. List of licensed distributors - published on web site. On or before December 31, 2009, the department shall publish on its web site a list of the names and addresses of all licensed distributors. The list shall be updated within seven days of any changes to the list.

Source: L. 2009: Entire section added, (HB 09-1173), ch. 372, p. 2018, § 7, effective August 5.

Controlled Substances Tax

ARTICLE 28.7

Controlled Substances Tax

39-28.7-101 to 39-28.7-109. (Repealed)

Source: L. 96: Entire article repealed, p. 135, § 2, effective March 25.

Editor’s note: This article was added in 1988. For amendments to this article prior to its repeal in 1996, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

Severance Tax

ARTICLE 29

Severance Tax

Cross references: For the constitutional provision that establishes limitations on spending, the imposition of taxes, and the incurring of debt, see § 20 of article X of the state constitution.

39-29-101.	Legislative declaration.		gas.
39-29-102.	Definitions.	39-29-106.	Tax on the severance of coal.
39-29-103.	Tax on severance of metallic minerals.	39-29-107.	Tax on severance of oil shale.
		39-29-107.5.	Credit allowed for prior payment of impact assistance.
39-29-104.	Tax on severance of molybdenum ore.		
		39-29-108.	Allocation of severance tax revenues - definitions - re-
39-29-105.	Tax on severance of oil and		

	peal.	39-29-110.	Local government severance tax fund - creation - administration - definitions.
39-29-108.5.	Credit of state share to capital construction fund - repayment. (Repealed)	39-29-111.	Withholding of income from oil and gas interest.
39-29-109.	Severance tax trust fund - created - administration - distribution of moneys - repeal.	39-29-112.	Procedures and reports.
		39-29-113.	Exemption prohibited - when.
39-29-109.3.	Operational account of the severance tax trust fund - repeal.	39-29-114.	Component members of a controlled group treated as one taxpayer.
		39-29-115.	Penalties and interest.
39-29-109.5.	Interest differential - public school energy efficiency fund - creation - uses - definitions - repeal.	39-29-116.	Uranium mill tailings remedial action program fund - creation - oversight committee - repeal.

39-29-101. Legislative declaration. (1) The general assembly hereby finds and declares that, when nonrenewable natural resources are removed from the earth, the value of such resources to the state of Colorado is irretrievably lost. Therefore, it is the intent of the general assembly to recapture a portion of this lost wealth through a special excise tax, in addition to other business taxes, on the nonrenewable natural resources removed from the soil of this state and sold for private profit.

(2) The general assembly further finds and declares that the severance of nonrenewable resources provides a potential source of revenue to the state and its political subdivisions. Therefore, it is the intent of the general assembly to impose a tax on the process of severance in addition to other business taxes.

(3) It additionally is the intent of the general assembly that a portion of the revenues derived from such a severance tax be used by the state for public purposes, that a portion be held by the state in a perpetual trust fund, and that a portion be made available to local governments to offset the impact created by nonrenewable resource development.

Source: L. 77: Entire article added, p. 1844, § 1, effective January 1, 1978.

ANNOTATION

Law reviews. For article, "Synthetic Fuels — Policy and Regulations", see 51 U. Colo. L. Rev. 465 (1980).

39-29-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Coal" means coal which has been processed into the form in which it is sold or otherwise used. Such processing includes, but is not limited to, cleaning and washing.

(1.5) "Commercial production", for a commercial oil shale facility, means production from such facility in excess of the first fifteen thousand tons per day of oil shale or ten thousand barrels per day of shale oil, whichever is greater. The calculation of the daily production shall be determined by dividing the total production of a calendar month by the total number of days in such month.

(2) "Executive director" means the executive director of the department of revenue.

(2.5) For tax years commencing on or after January 1, 2000, "gas" means natural gas, coalbed methane, and carbon dioxide.

(3) "Gross income" means:

(a) For oil and gas, the net amount realized by the taxpayer for sale of the oil or gas, whether the sale occurs at the wellhead or after transportation, manufacturing, and processing of the product. Net amount shall be calculated on the basis of the gross lease revenues, less deductions for any transportation, manufacturing, and processing costs borne by the taxpayer. Where the parties to the sale are related parties and the sales price is lower than the price for which that oil or gas could otherwise have been sold to a ready, willing, and able buyer and where the taxpayer was legally able to sell the oil or gas to such a buyer,

gross income shall be determined by reference to comparable arms-length sales of like kind, quality, and quantity in the same field or area, less deductions for transportation, manufacturing, and processing done prior to the sale. For purposes of this paragraph (a), "related parties" shall be defined by the department of revenue pursuant to rules and regulations.

(b) For metallic minerals, the value of ore immediately after its removal from the mine, and does not include any value added subsequent to mining by any treatment processes, such as crushing, grinding or concentration, by transportation from the mine, or by marketing of such ore or any products derived therefrom, but does not include income from the extraction or processing of ores or minerals from mine waste or residue of previously processed ores.

(4) "Gross proceeds", for oil shale, means the value of the oil shale at the point of severance. Such value shall be determined by deducting from the first sales price of the shale oil all costs, including direct and indirect expenditures, for:

- (a) Equipment and machinery;
- (b) Fragmenting, crushing, conveying, beneficiating, pyrolysis, retorting, refining, and transporting; and
- (c) Royalty payments.

(4.5) "Local units of government locally impacted" means units of government in the geographic area wherein reside employees of the operation producing the minerals and mineral fuels taxed pursuant to this article. The geographic area shall be determined on the basis of residence as reported in accordance with section 39-29-110 (1) (d).

(5) "Metallic minerals" means all minerals except molybdenum, oil and gas, carbon dioxide, coal, oil shale, rock, sand, gravel, stone products, earths, limestone, and dolomite.

(6) "Molybdenum ore" means ore which is mined primarily for the extraction of molybdenum therefrom.

(6.5) For tax years commencing on or after January 1, 2000, "oil" means crude oil and condensate.

(7) "Transportation" means the cost of moving identifiable, measurable oil or gas, including gas that is not in need of initial separation, from the point at which it is first identifiable and measurable to the sales point or other point where value is established. Any compression downstream of the meter or measurement point is deductible as a component of transportation. "Gathering" means the movement of an unseparated, bulk production stream to a point, on or off the lease, where the production stream undergoes initial separation into identifiable oil, gas, or free water and is not deductible as transportation. This definition shall not be construed to affect the legal relationship between royalty owners and lessees.

Source: L. 77: Entire article added, p. 1845, § 1, effective January 1, 1978. L. 80: (4.5) added, p. 739, § 1, effective April 10. L. 82: (1.5) added, p. 576, § 1, effective April 2; (5) amended, p. 578, § 1, effective January 1, 1983. L. 85: (3)(a) R&RE, p. 1287, § 1, effective July 1. L. 95: (3)(a) amended and (7) added, p. 979, § 2, effective May 25. L. 2000: (2.5) and (6.5) added, p. 1442, § 1, effective July 1.

Cross references: For the legislative declaration contained in the 1995 act amending this section, see section 1 of chapter 202, Session Laws of Colorado 1995.

39-29-103. Tax on severance of metallic minerals. (1) In addition to any other tax, there shall be levied, collected, and paid for each taxable year a tax upon the severance from the earth in this state of all metallic minerals as to all such severance occurring on and after January 1, 1978. Such tax shall be levied against every mining operation engaged in the severance of metallic minerals and shall be based upon the gross income of such mining operation. The rate of the tax for all metallic minerals shall be as follows:

- (a) For taxable years commencing prior to July 1, 1999:

Amount of gross income	Percentage tax on gross income
First \$11,000,000	No tax
Amount exceeding \$11,000,000	2.25%

(b) For taxable years commencing on or after July 1, 1999:

Amount of gross income	Percentage tax on gross income
First \$19,000,000	No tax
Amount exceeding \$19,000,000	2.25%

(2) There shall be allowed, as a credit against the tax computed in accordance with subsection (1) of this section, an amount equal to all ad valorem taxes assessed during the taxable year in the case of accrual basis taxpayers or paid during the taxable year in the case of cash basis taxpayers on producing mines valued for assessment pursuant to section 39-6-106. Such credit shall not exceed fifty percent of the tax computed in accordance with subsection (1) of this section.

Source: L. 77: Entire article added, p. 1845, § 1, effective January 1, 1978. L. 99: (1) amended, p. 925, § 2, effective May 24. L. 2008: IP(1) amended, p. 1679, § 2, effective August 5.

Cross references: For the legislative declaration contained in the 1999 act amending subsection (1), see section 1 of chapter 235, Session Laws of Colorado 1999.

39-29-104. Tax on severance of molybdenum ore. (1) In addition to any other tax, there shall be levied, collected, and paid for each calendar quarter a tax upon the severance of all molybdenum ore in this state. Such tax shall be levied against every person engaged in the severance of molybdenum ore. The rate of the tax for each calendar quarter shall be five cents per ton of molybdenum ore. On and after July 1, 1999, no tax provided for in this section shall be imposed on the first six hundred twenty-five thousand tons of molybdenum ore produced each quarter of the taxable year.

(2) Such actual severance shall be reported on quarterly declaration forms prescribed by the executive director. Such forms shall be filed with and the tax owed shall be paid to the department of revenue on or before the fifteenth day following the end of each such quarter.

Source: L. 77: Entire article added, p. 1846, § 1, effective January 1, 1978. L. 86: Entire section amended, p. 1135, § 1, effective April 1. L. 88: IP(1) amended and (1)(a) to (1)(c) repealed, p. 1343, §§ 1, 2, effective March 4. L. 94: (1) amended, p. 334, § 1, effective March 29. L. 99: (1) amended, p. 926, § 3, effective May 24. L. 2008: (1) amended, p. 1680, § 3, effective August 5.

Cross references: For the legislative declaration contained in the 1999 act amending subsection (1), see section 1 of chapter 235, Session Laws of Colorado 1999.

39-29-105. Tax on severance of oil and gas. (1) (a) In addition to any other tax, there shall be levied, collected, and paid for each taxable year commencing prior to January 1, 2000, a tax upon the gross income of crude oil, natural gas, carbon dioxide, and oil and gas severed from the earth in this state; except that oil produced from any wells that produce ten barrels per day or less of crude oil for the average of all producing days during the taxable year shall be exempt from the tax. Nothing in this paragraph (a) shall exempt a producer of oil and gas from submitting a production employee report as required by section 39-29-110 (1) (d) (I). The tax for crude oil, natural gas, carbon dioxide, and oil and gas shall be at the following rates of the gross income:

Under \$25,000	2%
\$25,000 and under \$100,000	3%
\$100,000 and under \$300,000	4%
\$300,000 and over	5%

(b) In addition to any other tax, there shall be levied, collected, and paid for each taxable year commencing on or after January 1, 2000, a tax upon the gross income attributable to the sale of oil and gas severed from the earth in this state; except that oil produced from any wells that produce fifteen barrels per day or less of oil and gas produced from wells that produce ninety thousand cubic feet or less of gas per day for the average of all producing days for such oil or gas production during the taxable year shall be exempt from the tax. The tax for oil and gas shall be at the following rates of the gross income:

Under \$25,000	2%
\$25,000 and under \$100,000	3%
\$100,000 and under \$300,000	4%
\$300,000 and over	5%

(2) (a) With respect to crude oil, natural gas, carbon dioxide, and oil and gas, there shall be allowed, as a credit against the tax computed in accordance with the provisions of paragraph (a) of subsection (1) of this section for each taxable year commencing prior to January 1, 2000, an amount equal to eighty-seven and one-half percent of all ad valorem taxes assessed during the taxable year in the case of accrual basis taxpayers or paid during the taxable year in the case of cash basis taxpayers upon crude oil, natural gas, carbon dioxide, and oil and gas leaseholds and leasehold interests and oil and gas royalties and royalty interests for state, county, municipal, school district, and special district purposes, except such ad valorem taxes assessed or paid for such purposes upon equipment and facilities used in the drilling for, production of, storage of, and pipeline transportation of crude oil, natural gas, and carbon dioxide. However, no credit shall be allowed for ad valorem taxes paid or assessed on oil wells that produce ten barrels per day or less of crude oil for the average of all producing days during the taxable year.

(b) With respect to oil and gas, there shall be allowed, as a credit against the tax computed in accordance with the provisions of paragraph (b) of subsection (1) of this section for each taxable year commencing on or after January 1, 2000, an amount equal to eighty-seven and one-half percent of all ad valorem taxes assessed during the taxable year in the case of accrual basis taxpayers or paid during the taxable year in the case of cash basis taxpayers upon oil and gas leaseholds and leasehold interests and oil and gas royalties and royalty interests for state, county, municipal, school district, and special district purposes, except such ad valorem taxes assessed or paid for such purposes upon equipment and facilities used in the drilling for, production of, storage of, and pipeline transportation of oil and gas. However, no credit shall be allowed for ad valorem taxes paid or assessed on oil and gas production that is exempt from the state severance tax pursuant to subsection (1) of this section.

Source: **L. 77:** Entire article added, p. 1846, § 1, effective January 1, 1978. **L. 82:** Entire section amended, p. 578, § 2, effective January 1, 1983. **L. 84:** (2) amended, p. 1028, § 1, effective January 1, 1985. **L. 2000:** Entire section amended, p. 1442, § 2, effective July 1. **L. 2008:** (1)(b) amended, p. 1680, § 4, effective August 5.

39-29-106. Tax on the severance of coal. (1) In addition to any other tax, there shall be levied, collected, and paid for each taxable year a tax upon the severance of all coal in this state. Such tax shall be levied against every person engaged in the severance of coal. Subject to the exemption and credits authorized in subsections (2), (3), and (4) of this section, the rate of the tax shall be thirty-six cents per ton of coal.

(2) (a) Repealed.

(b) On and after July 1, 1999, no tax provided for in subsection (1) of this section shall be imposed on the first three hundred thousand tons of coal produced in each quarter of the taxable year.

(c) Repealed.

(3) There shall be allowed, as a credit against the tax imposed by subsection (1) of this section, an amount equal to fifty percent of such tax for coal produced from underground mines.

(4) There shall be allowed, as an additional credit against the tax imposed by subsection (1) of this section, an amount equal to fifty percent of such tax for the production of lignitic coal, as such coal is classified by the American society for testing and materials (ASTM) in their D 388 standard for the classification of coals by rank.

(5) For every full one and one-half percent change in the index of producers' prices for all commodities prepared by the bureau of labor statistics of the United States department of labor, the tax rate provided in subsection (1) of this section shall be increased or decreased one percent. The executive director shall determine such adjustments to the rate of tax based upon changes in the index of producers' prices from the level of such index as of January, 1978, to the level of such index as of the last month of the quarter immediately preceding the quarter for which any taxes are due.

Source: **L. 77:** Entire article added, p. 1846, § 1, effective January 1, 1978. **L. 79:** (5) amended, p. 1505, § 1, effective January 1, 1980. **L. 84:** (2) amended, p. 1030, § 1, effective July 1. **L. 86:** (2) amended, p. 1137, § 1, effective April 11. **L. 88:** (5) amended, p. 1344, § 2, effective January 1; (1) amended, p. 1344, § 1, effective July 1. **L. 90:** (2)(a) and (2)(b) amended and (2)(c) repealed, p. 1747, §§ 1, 2, effective May 25. **L. 94:** (1) amended, p. 334, § 2, effective March 29. **L. 99:** (2)(a) and (2)(b) amended, p. 926, § 4, effective May 24. **L. 2008:** (2)(b) amended, p. 1680, § 5, effective August 5.

Editor's note: Subsection (2)(a) provided for the repeal of subsection (2)(a), effective July 1, 1999. (See L. 99, p. 926.)

Cross references: For the legislative declaration contained in the 1999 act amending subsections (2)(a) and (2)(b), see section 1 of chapter 235, Session Laws of Colorado 1999.

ANNOTATION

Prior voter approval required for tax rate increase that results from application of the formula in this section. Colo. Mining Ass'n v. Huber, 240 P.3d 453 (Colo. App. 2010).

39-29-107. Tax on severance of oil shale. (1) In addition to any other tax, there shall be levied, collected, and paid for each taxable year a tax upon the severance of oil shale as to all such severance occurring on and after January 1, 1978. Such tax shall be levied against every person engaged in the severance of oil shale. Subject to the provisions of subsections (2) and (3) of this section, such tax shall be levied on the gross proceeds from each commercial oil shale facility at a rate of four percent of such gross proceeds.

(2) The tax shall only have application to a commercial oil shale facility one hundred eighty days after the facility commences commercial production, as follows:

Year	Fraction of tax imposed by subsection (1)
First year	1/4;
Second year	1/2;
Third year	3/4;
Fourth and each succeeding year	Entire rate imposed by subsection (1)

(3) The production of the first fifteen thousand tons per day of oil shale or ten thousand barrels per day of shale oil, whichever is greater, shall be exempt from the tax.

(3.1) The calculation of the daily production subject to the tax and to the exemption in subsection (3) of this section shall be determined by dividing the total production of a calendar month by the total number of days in such month.

(4) Repealed.

Source: L. 77: Entire article added, p. 1847, § 1, effective January 1, 1978. L. 82: (2) amended and (3.1) added, p. 576, § 2, effective April 2; (4) repealed, p. 580, § 1, effective July 1. L. 2004: (1) amended, p. 1211, § 97, effective August 4.

39-29-107.5. Credit allowed for prior payment of impact assistance. (1) (a) There shall be allowed, as a credit against any taxes imposed by this article on the severance of minerals or mineral fuels from or for a new operation from or for which first severance occurs subsequent to June 30, 1979, an amount equal to the value of approved contributions by the taxpayer made prior to first severance of such minerals or mineral fuels to assist in solving the impact problems of units of local government resulting from the initiation of such new operation.

(b) There shall be allowed, as a credit against any taxes imposed by this article on the severance of minerals or mineral fuels from or for an operation which has an increase in production from or for which increased severance occurs subsequent to June 30, 1980, an amount equal to the value of approved contributions by the taxpayer made to assist in solving the impact problems of units of local government or local units of government locally impacted by the increase in production of an operation.

(c) There shall be allowed, pursuant to an agreement between or on behalf of the taxpayer and the unit of local government specified in subparagraph (I) of paragraph (a) of subsection (2) of this section as a credit against any taxes imposed by this article on the severance of minerals or mineral fuels, in addition to any amounts determined under paragraphs (a) and (b) of this subsection (1) and subsection (2) of this section, an amount equal to three-fourths of one percent per month times the amount of approved contributions by a taxpayer for each month that any approved contribution precedes the month in which said approved contribution is credited against a taxpayer's yearly severance tax liability. Any amounts of approved contributions credited against a taxpayer's yearly severance tax liability shall be applied to reduce the amount, if any, of approved contributions not previously credited, and the additional percentage provided in this paragraph (c) shall apply solely to said reduced amount of approved contributions.

(2) (a) Approved contributions, for the purpose of such credits, shall include the contribution of property or payment of money to units of local government or local units of government locally impacted, for use in planning, including financial, architectural, and engineering services, construction, or expansion of public facilities, including but not limited to county or municipal roads, schools, recreation facilities, water facilities, sewage facilities, police and fire protection facilities, and hospitals, which are deemed to be necessitated by the initiation of a new operation or increase in production of an existing operation. In addition, subject to the agreement reached pursuant to paragraph (c) of subsection (1) of this section, approved contributions may also include any loss sustained by reason of the sale of any bonds by the taxpayer who purchased such bonds, the proceeds of which bonds are used in the planning, construction, or expansion of any such public facilities by a unit of local government or local unit of government locally impacted, and any loss by reason of the default on loans made by a taxpayer or satisfaction of a guaranty obligation of the taxpayer arising out of the issuance of such bonds, whether or not such bonds are purchased by the taxpayer. Such losses shall be approved contributions as of the date of the making of a loan, the date of issuance of the bonds, or the date of entering into the guaranty obligation; except that, for purposes of the additional credit allowed pursuant to paragraph (c) of subsection (1) of this section, the date of the approved contribution shall be the date of default on any such loan, the date of loss on any such bond, or the date of satisfaction of any such guaranty obligation. In no event shall the total amount of approved contributions by a taxpayer exceed fifty percent of the severance tax liability which the taxpayer anticipates will be incurred during the first ten years of severance from a new operation or fifty percent of the increased severance tax liability which the taxpayer anticipates will be incurred during the first ten years of severance from an expanded existing operation plus the amounts calculated pursuant to paragraph (c) of subsection (1) of this section. In order for an approved contribution to qualify for credit, the following requirements shall be fulfilled:

(I) Each contribution shall be based on an agreement between or on behalf of the taxpayer and a unit of local government or local unit of government locally impacted, specifying the need for such contribution and its nature, value or amount, and purpose;

(II) Each contribution must be acted upon for credit and, if approved, a certificate of eligibility issued, within ninety days after joint submission by the taxpayer and the unit of local government, or local unit of government locally impacted, by the executive director of the department of local affairs upon the recommendation of the energy impact assistance advisory committee created by section 34-63-102 (5) (b), C.R.S., and failure to act upon the eligibility within said ninety days shall be deemed as approval and certification of the contribution; and

(III) Certification of eligibility for credit of a contribution of a specified value or amount must be transmitted by the executive director of the department of local affairs to the executive director of the department of revenue, the unit of local government or local unit of government locally impacted, and the taxpayer.

(b) In the event that the taxpayer purchases any bonds relating to public facilities as provided in this subsection (2) or makes any loans or guaranty arising out of the issuance of such bonds, the contribution, for purposes of subparagraphs (I) and (II) of paragraph (a) of this subsection (2), shall be the purchase price of any bonds purchased, the face value of any bonds guaranteed, or the amount loaned; except that the taxpayer shall be entitled to claim as a credit pursuant to subsection (3) of this section only the amount of loss on any such bonds, the amount paid in satisfaction of any such guaranty, or the amount of default on any such bonds.

(c) In order for a loss from the purchase and sale of bonds to qualify as an approved contribution:

(I) The purchase must arise out of the original distribution of such bonds; and

(II) The sale of such bonds must be made through a registered broker; and

(III) The sale must take place within five business days of the purchase.

(3) A taxpayer shall be entitled to credit against its severance tax liability in an amount equal to the total of all contributions made and certified as eligible for credit plus the amounts calculated pursuant to paragraph (c) of subsection (1) of this section. The taxpayer may claim such credit by submitting with the annual declarations and returns required by section 39-29-112 the certifications of eligibility for such credit or evidence regarding deemed certification, and in the case of losses sustained by reason of the sale of any bonds purchased by the taxpayer, by reason of satisfaction of a guaranty obligation of the taxpayer arising out of the issuance of bonds, or by reason of loans made by the taxpayer, evidence of such losses. The amount of credit available in any one taxable year, including carry-overs, shall not exceed the taxpayer's severance tax liability in such year. Any excess shall be carried over and shall be available as a credit in the next succeeding year or years subject to the same annual limitation.

(4) For the purposes of this section, minerals or mineral fuels shall include, but not be limited to, oil shale, crude oil, natural gas, and oil and gas.

(5) The executive director of the department of local affairs, or his or her designee; the executive director of the department of natural resources, or his or her designee; the executive director of the department of revenue, or his or her designee; and the energy impact assistance advisory committee created in section 34-63-102 (5) (b) (I), C.R.S., shall work together with the executive director, or his or her designee, of the Colorado municipal league, or its successor organization; the executive director, or his or her designee, of Colorado counties, incorporated, or its successor organization; representatives of the energy and mineral industry; and any other stakeholders to determine how best to improve the impact assistance credit established in this section so that any major infrastructure needs of communities impacted by the energy and mineral industry are addressed. The group specified in this subsection (5) shall recommend any proposed legislation to the agriculture, livestock, and natural resources committee of the house of representatives and the agriculture, natural resources, and energy committee of the senate, or any successor committees, no later than January 31, 2009.

Source: **L. 79:** Entire section added, p. 1506, § 1, effective May 31. **L. 80:** Entire section amended, p. 739, § 2, effective April 10. **L. 81:** Entire section amended, p. 1900, § 1, effective July 1. **L. 83:** (1)(c), (2)(a)(I), and (4) amended, p. 1543, § 1, effective May 20. **L. 2008:** (5) added, p. 898, § 1, effective August 5.

39-29-108. Allocation of severance tax revenues - definitions - repeal. (1) Except as provided in subsections (2) and (3) of this section, the total gross receipts realized from the severance taxes imposed on minerals and mineral fuels under the provisions of this article shall be credited as follows:

(a) For oil and gas, one hundred percent to the state general fund;
(b) For oil shale, forty percent to the state general fund, forty percent to the state severance tax trust fund created by section 39-29-109, and twenty percent to the local government severance tax fund created by section 39-29-110;

(c) For molybdenum, as follows:

(I) For fiscal years ending on or before June 30, 1979, seventy percent to the state general fund, twenty percent to the state severance tax trust fund created by section 39-29-109, and ten percent to the local government severance tax fund created by section 39-29-110;

(II) For the fiscal year ending June 30, 1980, sixty percent to the state general fund, thirty percent to the state severance tax trust fund created by section 39-29-109, and ten percent to the local government severance tax fund created by section 39-29-110;

(III) For the fiscal year ending June 30, 1981, fifty percent to the state general fund, forty percent to the state severance tax trust fund created by section 39-29-109, and ten percent to the local government severance tax fund created by section 39-29-110;

(d) For coal and metallic minerals, as follows:

(I) For fiscal years ending on or before June 30, 1979, forty percent to the state general fund, fifteen percent to the state severance tax trust fund created by section 39-29-109, and forty-five percent to the local government severance tax fund created by section 39-29-110;

(II) For the fiscal year ending June 30, 1980, thirty percent to the state general fund, twenty-five percent to the state severance tax trust fund created by section 39-29-109, and forty-five percent to the local government severance tax fund created by section 39-29-110;

(III) For the fiscal year ending June 30, 1981, twenty percent to the state general fund, thirty-five percent to the state severance tax trust fund created by section 39-29-109, and forty-five percent to the local government severance tax fund created by section 39-29-110.

(2) (a) (I) Of the total gross receipts realized from the severance taxes imposed on minerals and mineral fuels under the provisions of this article after June 30, 2012, one million five hundred thousand dollars shall be annually transferred on July 1, 2012, and each July 1 thereafter through July 1, 2016, to the innovative energy fund created in section 24-38.5-102.5, C.R.S. Of the remainder of the total gross receipts in each fiscal year after each July 1 transfer to the innovative energy fund, fifty percent shall be credited to the state severance tax trust fund created by section 39-29-109, and fifty percent shall be credited to the local government severance tax fund created by section 39-29-110.

(II) This paragraph (a) is repealed, effective January 1, 2017.

(b) Of the total gross receipts realized from the severance taxes imposed on minerals and mineral fuels under the provisions of this article after June 30, 2017, fifty percent shall be credited to the state severance tax trust fund created by section 39-29-109, and fifty percent shall be credited to the local government severance tax fund created by section 39-29-110.

(2.5) Repealed.

(3) Effective July 1, 1981, the total gross receipts from any taxpayer who has previously claimed the full amount of the credit for an approved contribution under section 39-29-107.5 shall be allocated solely to the state severance tax trust fund until such time as there is allocated to such fund, in addition to any current allocation to such fund, an amount equal to what would have been allocated to such fund during the time the taxpayer claimed such credit.

(4) (a) Notwithstanding any provisions of this section to the contrary, for the 1987-88, 1988-89, 1989-90, 1990-91, 1991-92, 1992-93, and 1993-94 fiscal years, those gross

receipts realized from the severance taxes imposed on minerals and mineral fuels which would otherwise be credited to the state severance tax trust fund under the provisions of this section shall be credited to the state general fund.

(b) Notwithstanding any provisions of this section to the contrary, for the 1994-95 fiscal year, those gross receipts realized from the severance taxes imposed on minerals and mineral fuels which would otherwise be credited to the state severance tax trust fund under the provisions of this section shall be credited to the uranium mill tailings remedial action program fund created in section 39-29-116 (2); except that the amount credited to such fund during the 1994-95 fiscal year shall not exceed five million dollars. Any receipts in excess of five million dollars shall be credited to the state severance tax trust fund.

(c) Notwithstanding any provisions of this section to the contrary, for the 1995-96 and 1996-97 fiscal years, those gross receipts realized from the severance taxes imposed on minerals and mineral fuels which would otherwise be credited to the state severance tax trust fund under the provisions of this section shall be credited to the uranium mill tailings remedial action program fund created in section 39-29-116 (2); except that the amount credited to such fund during the 1995-96 and 1996-97 fiscal years shall not exceed two and one-half million dollars per fiscal year. Any receipts in excess of two and one-half million dollars shall be credited to the state severance tax trust fund.

(5) (a) To assist in the preparation of state budgets, the consensus revenue estimate group shall prepare a quarterly forecast of severance revenues, including price and production volume.

(b) As used in this subsection (5):

(I) "Consensus revenue estimate group" means the staff of the legislative council appointed pursuant to section 2-3-304, C.R.S., in consultation with the office of state planning and budgeting created in section 24-37-102, C.R.S.

(II) "Price insurance contract" means a written agreement between the state treasurer and a qualified counterparty relating to a commodity price for crude oil and natural gas based on levels of floor transactions or forward rate transactions executed through standard financial industry mechanisms.

(III) "Qualified counterparty" means a person whose long-term obligations are rated, at the time a price insurance contract is executed, in one of the two top rating categories of a nationally recognized rating agency.

(IV) "Severance revenues" means:

(A) The revenues generated from taxes levied pursuant to this article; and

(B) The state share of federal mineral leasing royalties received pursuant to section 34-63-102, C.R.S.

(c) Repealed.

Source: **L. 77:** Entire article added, p. 1847, § 1, effective January 1, 1978. **L. 79:** (1)(c)(III), (1)(d)(III), and (2) amended, pp. 1508, 1641, §§ 2, 56, effective July 19. **L. 81:** IP(1) amended and (3) added, p. 1903, § 2, effective June 19. **L. 87:** (4) added, p. 1469, § 1, effective July 1. **L. 88:** (4) amended, p. 1346, § 1, effective May 11. **L. 89:** (4) amended, p. 1516, § 1, effective April 7. **L. 90:** (4) amended, p. 1748, § 1, effective April 3. **L. 91:** (4) amended, p. 1951, § 1, effective April 11. **L. 92:** (4) amended, p. 2237, § 1, effective February 25. **L. 93:** (4) amended, p. 10, § 1, effective February 16; (4) amended, p. 445, § 1, effective April 19. **L. 95:** (2.5) added, p. 980, § 3, effective May 25. **L. 2007:** (5) added, p. 1900, § 1, effective June 1. **L. 2012:** (2) amended, (HB 12-1315), ch. 224, p. 978, § 45, effective July 1.

Editor's note: (1) Subsection (2.5)(b) provided for the repeal of subsection (2.5), effective June 30, 1999. (See L. 95, p. 980.)

(2) Subsection (5)(c)(II) provided for the repeal of subsection (5)(c), effective July 1, 2008. (See L. 2007, p. 1900.)

Cross references: For the legislative declaration contained in the 1995 act enacting subsection (2.5), see section 1 of chapter 202, Session Laws of Colorado 1995.

39-29-108.5. Credit of state share to capital construction fund - repayment. (Repealed)

Source: L. 83: Entire section added, p. 2099, § 13, effective October 13. L. 84: (2) amended, p. 735, § 2, effective April 30. L. 85: (2) amended, p. 1268, § 8, effective May 30. L. 86, 2nd Ex. Sess.: (2) amended, p. 72, § 3, effective August 14. L. 2002: Entire section repealed, p. 1006, § 2, effective August 7.

39-29-109. Severance tax trust fund - created - administration - distribution of moneys - repeal. (1) There is hereby created in the office of the state treasurer the severance tax trust fund, also referred to in this section as the “fund”. The fund is to be perpetual and held in trust as a replacement for depleted natural resources, for the development and conservation of the state’s water resources pursuant to sections 37-60-106 (1) (j) and (1) (l), 37-60-119, and 37-60-122, C.R.S., for the use in funding programs that promote and encourage sound natural resource planning, management, and development related to minerals, energy, geology, and water and for the use in funding programs to reduce the burden of increasing home energy costs on low-income households.

(2) State severance tax receipts shall be credited to the severance tax trust fund as provided in section 39-29-108. Except as otherwise set forth in section 39-29-109.5, all income derived from the deposit and investment of the moneys in the fund shall be credited to the fund. At the end of any fiscal year, all unexpended and unencumbered moneys in the fund remain therein and shall not be credited or transferred to the general fund or any other fund. All moneys in the fund are subject to appropriation by the general assembly for the following purposes:

(a) **The perpetual base account.** (I) Repealed.

(II) One-half of the severance tax receipts credited to the fund for fiscal years commencing on or after July 1, 2009, shall be credited to the perpetual base account of the fund and used for state water projects pursuant to sections 37-60-119 and 37-60-122, C.R.S.; except that the total amount of severance tax receipts credited to the perpetual base account during said fiscal year shall not exceed fifty million dollars unless the cap established in subparagraph (III) of this paragraph (a) is exceeded. The authorization and contract for each such project shall require repayment of principal and interest to the fund, and moneys so repaid shall be credited to the perpetual base account of the fund.

(III) For fiscal years commencing on or after July 1, 2009, the state treasurer shall transfer the moneys credited to the fund that are not credited to either the perpetual base account or the operational account to the small communities water and wastewater grant fund created in section 25-1.5-208 (4), C.R.S.; except that the maximum amount of moneys annually credited to the small communities water and wastewater grant fund shall not exceed ten million dollars.

(IV) to (VI) Repealed.

(VII) Notwithstanding any provision of this paragraph (a) to the contrary, on June 30, 2011, the state treasurer shall deduct sixteen million dollars from the perpetual base account of the fund and transfer such sum to the general fund.

(VIII) (A) Notwithstanding any provision of this paragraph (a) to the contrary, the state treasurer shall transfer to the Colorado water conservation board construction fund, for use by the Colorado water conservation board, also referred to in this subparagraph (VIII) as the “board”, thirty-six million dollars for the purchase of all or a portion of Colorado’s allotment of Animas-La Plata project water. The state treasurer shall make the transfer mandated by this sub-subparagraph (A) in three consecutive installments of twelve million dollars on June 30, 2011, June 30, 2012, and July 1, 2012.

(B) Notwithstanding any other law, including section 24-30-1303, C.R.S., once sufficient funds have been appropriated to the board for such purposes, the department of natural resources, acting through the board, is authorized to enter into a contract or other agreement with the United States bureau of reclamation to acquire all or a portion of Colorado’s allocation of water in the Animas-La Plata project. The authority to acquire such water includes the ability to contract with and allocate water to local entities and water providers; to receive and expend moneys from entities in repayment; to undertake operations,

maintenance, and replacement costs; to pay the costs of storage or other necessary expenses; and to otherwise implement the purposes of this sub-subparagraph (B) and utilize the water acquired. The board is also authorized to undertake such action as is necessary to lease, sublease, exchange, sell, assign, or otherwise effectuate the use of project water acquired under this subparagraph (VIII). In the event of a conflict between the application of state or federal law or rules, including chapter 3 of the state fiscal rules in existence as of June 7, 2010, federal laws and rules shall apply.

(C) Except as provided in sub-subparagraph (D) of this subparagraph (VIII), the moneys transferred to the board pursuant to sub-subparagraph (A) of this subparagraph (VIII) shall remain available to the board until expended.

(D) If, on June 30, 2015, any moneys appropriated under sub-subparagraph (A) of this subparagraph (VIII) have not been fully expended, the unexpended moneys are deauthorized and shall revert to the perpetual base account.

(E) This subparagraph (VIII) is repealed, effective July 1, 2015.

(IX) (A) Notwithstanding any provision of this paragraph (a) to the contrary, on July 1, 2011, the state treasurer shall deduct twenty-five million dollars from the perpetual base account of the fund and transfer such sum to the general fund.

(B) Notwithstanding any provision of this paragraph (a) to the contrary, on June 30, 2012, the state treasurer shall deduct twenty-three million one hundred thousand dollars from the perpetual base account of the fund and transfer such sum to the general fund.

(X) (A) Notwithstanding any provision of this paragraph (a) to the contrary, the state treasurer shall transfer to the Colorado water conservation board construction fund, for use by the Colorado water conservation board, also referred to in this subparagraph (X) as the "board", thirty million dollars for the planning, design, and construction of the Rio Grande cooperative project. Of this amount, the board shall allocate up to ten million dollars for improvements associated with the Beaver Park reservoir, owned and operated by the division of parks and wildlife, and up to twenty million dollars for improvements to the Rio Grande reservoir, owned and operated by the San Luis valley irrigation district. The state treasurer shall transfer the moneys in two consecutive annual installments of fifteen million dollars on July 1, 2012, and July 1, 2013.

(B) Pursuant to section 37-60-122 (1) (b), C.R.S., the board may loan moneys in an amount up to ten million dollars to the division of parks and wildlife and up to fifteen million dollars to the San Luis valley irrigation district.

(C) Pursuant to section 37-60-121 (1) (b) (IV), C.R.S., the board may determine the amount of loan, or loan-to-grant ratio, for the second fifteen-million-dollar installment, as set forth in sub-subparagraph (A) of this subparagraph (X), commencing on July 1, 2013.

(D) All interest earned from the investment of moneys in the fund shall be credited to, and made a part of, the Colorado water conservation board construction fund. All funds not expended remain and are part of the Colorado water conservation board construction fund.

(XI) (A) Notwithstanding any provision of this paragraph (a) to the contrary, the state treasurer shall transfer to the Colorado water conservation board construction fund, for use by the Colorado water conservation board, also referred to in this subparagraph (XI) as the "board", thirteen million dollars for the implementation of the Chatfield reservoir reallocation project, pursuant to section 37-60-120.1, C.R.S. The state treasurer shall transfer the moneys in two consecutive installments of five million dollars on January 1, 2013, and eight million dollars on July 1, 2014.

(B) This subparagraph (XI) is repealed, effective July 1, 2015.

(b) **The operational account.** There is hereby created the operational account of the severance tax trust fund, also referred to in this paragraph (b) as the "account", which shall be administered by the state treasurer and shall consist of one-half of the severance tax receipts credited to the fund for tax years commencing on and after July 1, 1995. Moneys in the account shall be distributed as set forth in section 39-29-109.3.

(c) **The water supply reserve fund.** (I) There is hereby created in the office of the state treasurer the water supply reserve fund, also referred to in this paragraph (c) as the "fund", which shall be administered by the Colorado water conservation board. The state treasurer shall transfer moneys to the fund from the operational account of the severance tax trust fund as specified in section 39-29-109.3 (2) (a). The moneys in the fund are hereby

continuously appropriated, for purposes authorized by this paragraph (c), to the Colorado water conservation board, also referred to in this paragraph (c) as the “board”. All interest derived from the investment of moneys in the fund shall be credited to the statewide account of the fund, which account is hereby created. Repayments of both the principal and interest on loans from the fund shall be credited to the fund. Any balance remaining in the fund at the end of any fiscal year remains in the fund. The board shall allocate moneys by grant or loan from the fund only for water activities approved by a roundtable pursuant to article 75 of title 37, C.R.S. The approving roundtable is the roundtable for the basin in which a proposed water diversion or nonstructural activity would occur. If the applicant is a covered entity, as defined in section 37-60-126, C.R.S., the board shall allocate moneys by grant or loan from the fund only if the applicant has adopted a water conservation plan, as defined in section 37-60-126, C.R.S. The board, in consultation with the interbasin compact committee created in section 37-75-105, C.R.S., shall establish criteria and guidelines for allocating moneys from the fund, including criteria that ensure that the allocations will assist in meeting water supply needs identified under section 37-75-104 (2) (c), C.R.S., in a manner consistent with section 37-75-102, C.R.S., and shall facilitate both structural and nonstructural projects or methods. Eligible water activities include the following:

(A) Competitive grants for environmental compliance and feasibility studies;

(B) Technical assistance regarding permitting, feasibility studies, and environmental compliance;

(C) Studies or analyses of structural, nonstructural, consumptive, and nonconsumptive water needs, projects, or activities; and

(D) Structural and nonstructural water projects or activities.

(II) On or before October 31 of each year, commencing with the year 2010, the board shall consult with the interbasin compact committee to produce the annual report required by section 37-75-105 (4), C.R.S., regarding how moneys in the fund were allocated in the previous twelve-month period.

Source: **L. 77:** Entire article added, p. 1848, § 1, effective January 1, 1978. **L. 79:** (1) amended, p. 1508, § 1, effective July 19. **L. 83:** (3) added, p. 1522, § 9, effective March 22. **L. 85:** (1) amended, p. 1268, § 9, effective May 30; (4) added, p. 1289, § 1, effective June 6. **L. 86, 2nd Ex. Sess.:** (1)(b) amended, p. 72, § 4, effective August 14. **L. 87:** (3) amended, p. 1109, § 5, effective April 22. **L. 88:** (4) amended, p. 1347, § 1, effective May 17. **L. 89:** (4) repealed, p. 1517, § 1, effective July 1. **L. 90:** (5) added, p. 1750, § 2, effective May 2. **L. 93:** (5) repealed, p. 446, § 2, effective April 19. **L. 96:** (1) and (3) amended, p. 997, § 1, effective May 23. **L. 99:** IP(1)(a) amended, p. 926, § 5, effective May 24. **L. 2000:** (1)(d) added, p. 554, § 1, effective May 16; (1)(c)(I)(D) amended, p. 1750, § 17, effective June 1. **L. 2001:** (1)(e) added, p. 1, § 1, effective January 17; (1)(c)(I)(D) amended, p. 690, § 26, effective May 30. **L. 2002:** (1)(f) added, p. 158, § 19, effective March 27; (1)(c)(III) added, p. 307, § 1, effective April 18. **L. 2003:** (1)(g) added, p. 458, § 19, effective March 5; (1)(h) added, p. 1544, § 7, effective May 1. **L. 2004:** (1)(i) added, p. 362, § 5, effective April 7. **L. 2005:** (6) added, p. 413, § 2, effective April 28; (1)(j) added, p. 485, § 1, effective May 5; (1)(c)(III) amended, p. 1483, § 2, effective June 7; (1)(c)(I)(C) amended, p. 692, § 2, effective July 1. **L. 2006:** (1.5) added, p. 1, § 1, effective February 3; (1)(k) added, p. 1048, § 3, effective May 25; (7) added, p. 1140, § 2, effective May 25; (1)(c)(I)(D) and (1)(c)(III)(A) amended, p. 1283, § 5, effective May 26; (1)(a)(IV) added, p. 1648, § 1, effective June 5; (1)(m), (8), and (8.5) added, pp. 1744, 1738, §§ 5, 1, effective June 6; (1)(a)(III) added, p. 1227, § 1, effective July 1; (1)(a)(II) and (1)(c)(I)(C) amended, p. 218, § 17, effective August 7; (1)(l) added, p. 1346, § 2, effective August 7. **L. 2007:** (8)(a) amended, p. 490, § 1, effective April 16; (1.5)(h)(VI) amended and (1.5)(h)(VII) added, p. 1364, § 4, effective May 29; IP(1)(a) amended, p. 1408, § 3, effective May 30; (1)(k)(III) and (1)(l)(IV) amended and (1)(k)(IV), (1)(k)(V), (1)(k)(VI), and (1)(k)(VII) added, pp. 1595, 1594, §§ 4, 3, effective May 31; (7) amended, p. 1549, § 1, effective May 31; IP(1)(a)(III) amended, p. 1887, § 1, effective June 1; (1)(c)(III)(B) amended, p. 2049, § 98, effective June 1; (1)(c)(III)(B) amended and (1)(c)(III)(C) added, p. 1892, § 3, effective June 1. **L. 2008:** (1.5)(b)(II), (1.5)(c)(II), (1.5)(d)(I)(B), (1.5)(e)(I)(B), IP(1.5)(h)(I), IP(1.5)(h)(III), (1.5)(h)(IV), IP(1.5)(h)(V), (1.5)(h)(VI),

(1.5)(h)(VII), (1.5)(i)(IV), and (8)(a) amended, p. 72, § 13, effective March 18; (1) amended, p. 1336, § 11, effective May 27; entire section R&RE, p. 1861, § 1, effective June 2. **L. 2009:** (2)(a) amended, (SB 09-208), ch. 149, p. 628, § 34, effective April 20; (2)(a) amended, (SB 09-165), ch. 183, p. 804, § 2, effective April 22; (2)(a)(I)(C), (2)(a)(IV), and (2)(a)(V) added, (SB 09-279), ch. 367, p. 1931, § 22, effective June 1; (2)(c) amended, (SB 09-106), ch. 386, p. 2089, § 1, effective July 1. **L. 2010:** (2)(a)(VI) added, (HB 10-1327), ch. 135, p. 451, § 8, effective April 15; (2)(a)(VII) added, (HB 10-1388), ch. 362, p. 1716, § 2, effective June 7; (2)(a)(VIII) added, (HB 10-1250), ch. 381, p. 1782, § 7, effective June 7. **L. 2011:** (2)(a)(VII) amended, (SB 11-164), ch. 33, p. 94, § 9, effective March 18; (2)(a)(IX) added, (SB 11-226), ch. 190, p. 734, § 6, effective May 19; (2)(a)(IV), (2)(a)(V), and (2)(a)(VI) repealed, (HB 11-1303), ch. 264, p. 1176, § 96, effective August 10. **L. 2012, 1st Ex. Sess.:** IP(2), (2)(a)(VIII)(A), and (2)(c), amended and (2)(a)(X) and (2)(a)(XI) added, (SB 12S-002), ch. 1, p. 2420, § 19, effective May 19.

Editor's note: (1) Subsection (1)(d)(II) provided for the repeal of subsection (1)(d), effective July 1, 2001. (See L. 2000, p. 554.)

(2) Subsection (1)(e)(II) provided for the repeal of subsection (1)(e), effective July 1, 2002. (See L. 2001, p. 1.)

(3) Subsection (1)(j)(II) provided for the repeal of subsection (1)(j), effective July 1, 2006. (See L. 2005, p. 485.)

(4) Subsection (1)(a)(IV) was originally numbered as (1)(a)(III) in House Bill 06-1393 but was renumbered on revision for ease of location.

(5) Amendments to subsection (1)(c)(III)(B) by House Bill 07-1367 and Senate Bill 07-008 were harmonized.

(6) Subsection (1)(k)(III) provided for the repeal of subsections (1)(k)(I) and (1)(k)(II), effective July 1, 2007. (See L. 2007, p. 1595.)

(7) Subsection (6)(d) provided for the repeal of subsection (6), effective July 1, 2007. (See L. 2005, p. 413.)

(8) Subsections (1.5)(b)(II), (1.5)(c)(II), (1.5)(d)(I)(B), (1.5)(e)(I)(B), the introductory portions to subsections (1.5)(h)(I) and (1.5)(h)(III), subsection (1.5)(h)(IV), the introductory portion to subsection (1.5)(h)(V), and subsections (1.5)(h)(VI), (1.5)(h)(VII), (1.5)(i)(IV), and (8)(a) were amended in House Bill 08-1025. Those amendments were superseded by the repeal and reenactment of the section in House Bill 08-1398.

(9) (a) Amendments to subsection (2)(a) by Senate Bill 09-165 and Senate Bill 09-279 were harmonized. Subsection (2)(a)(I)(C) was numbered as subsection (2)(a)(III) in Senate Bill 09-279 but was renumbered as a result of the harmonization. (See L. 2009, p. 1931).

(b) Subsection (2)(a)(I)(C) from Senate Bill 09-165 was renumbered as subsection (2)(a)(I)(D) as a result of the harmonization of Senate Bill 09-165 and Senate Bill 09-279. (See L. 2009, p. 804.)

(10) Subsection (2)(a)(I)(D) provided for the repeal of subsection (2)(a)(I), effective July 1, 2009. (See L. 2009, p. 804.)

Cross references: For the legislative declaration stating the purpose of, and the provision directing legislative staff agencies to conduct, a post-enactment review pursuant to § 2-2-1201 scheduled in 2012, see sections 1 and 6 of chapter 321, Session Laws of Colorado 2007. To obtain a copy of the review, once completed, view Colorado Legislative Council's web site.

39-29-109.3. Operational account of the severance tax trust fund - repeal. (1) For fiscal years commencing on and after July 1, 1997, the executive director of the department of natural resources shall submit with the department's budget request for each fiscal year a list and description of the programs the executive director recommends to be funded from the operational account of the severance tax trust fund created in section 39-29-109 (2) (b), referred to in this section as the "operational account". The minerals, energy, and geology policy advisory board established pursuant to section 34-20-104, C.R.S., shall review the executive director's recommendation before submittal. The general assembly may appropriate moneys from the total moneys available in the operational account to fund recommended programs as follows:

(a) (I) For programs or projects within the Colorado oil and gas conservation commission, up to thirty-five percent of the moneys in the operational account for fiscal years commencing on or after July 1, 2009.

(II) Moneys appropriated for programs or projects pursuant to subparagraph (I) of this paragraph (a) shall be used by the Colorado oil and gas conservation commission for plugging and abandonment projects, for well-site location reclamation projects, or for regulatory and environmental programs or projects as specifically appropriated by the general assembly for use on such programs or projects; except that, if the commission determines that an emergency exists, the commission may expend any moneys received for the emergency without any further appropriation. In determining the uses of these moneys, the commission shall give priority to uses that reduce industry fees and mill levies.

(b) For programs within the Colorado geological survey, up to twenty percent of the moneys in the operational account;

(c) For programs within the division of reclamation, mining, and safety, up to thirty percent of the moneys in the operational account for fiscal years commencing before July 1, 2008, and up to twenty-five percent of the moneys in the operational account for fiscal years commencing on or after July 1, 2008. As part of any appropriation made, five hundred thousand dollars, or so much as may be available, shall be transferred to the abandoned mine reclamation fund created in section 34-34-102 (1), C.R.S.

(d) For programs within the Colorado water conservation board and for purposes authorized by article 75 of title 37, C.R.S., up to five percent of the moneys in the operational account;

(e) For fiscal years commencing on or after July 1, 2008, only, for programs within the division of parks and wildlife that monitor, manage, or mitigate the impacts of mineral or mineral fuel production activities on wildlife in any region of the state in which production activity is occurring or, from any location in the state, research such impacts, up to five percent of the moneys in the operational account, which moneys shall not supplant moneys that would otherwise be made available for such programs;

(f) For fiscal years commencing on or after July 1, 2009, for programs within the division of parks and wildlife that operate, maintain, or improve state parks in any region of the state in which production activity is occurring, up to ten percent of the moneys in the operational account.

(2) Subject to the requirements of subsections (3) and (4) of this section, if the general assembly chooses not to spend up to one hundred percent of the moneys in the operational account as specified in subsection (1) of this section, the state treasurer shall transfer the following:

(a) (I) To the water supply reserve fund created in section 39-29-109 (2) (c), the following amounts:

(A) to (C) Repealed.

(D) For the state fiscal year commencing July 1, 2011, seven million dollars. This sub-subparagraph (D) is repealed, effective July 1, 2013.

(E) For each state fiscal year commencing on or after July 1, 2012, ten million dollars.

(II) (Deleted by amendment, L. 2009, (SB 09-106), ch. 386, p. 2090, § 2, effective July 1, 2009.)

(b) To fund the conservation district grant fund created in section 35-1-106.7, C.R.S., for soil and water conservation, the following amounts:

(I) to (III) Repealed.

(IV) (A) For the state fiscal year commencing July 1, 2011, through the state fiscal year commencing on July 1, 2021, four hundred fifty thousand dollars.

(B) This subparagraph (IV) is repealed, effective July 1, 2023.

(c) (I) To the water efficiency grant program cash fund created in section 37-60-126 (12), C.R.S., for use in accordance with that section, the following amounts:

(A) For each state fiscal year commencing on or after July 1, 2012, five hundred fifty thousand dollars.

(B) (Deleted by amendment, L. 2009, (SB 09-293), ch. 370, p. 2008, § 1, effective June 1, 2009.)

(II) Moneys transferred pursuant to this paragraph (c) shall be in addition to and shall not replace any moneys appropriated to the Colorado water conservation board pursuant to paragraph (d) of subsection (1) of this section.

(III) This paragraph (c) is repealed, effective July 1, 2020.

(d) Repealed.

(e) To the species conservation trust fund created in section 24-33-111 (2) (a), C.R.S., the following amounts:

(I) to (III) Repealed.

(IV) (A) For the state fiscal year commencing July 1, 2011, six hundred thousand dollars.

(B) This subparagraph (IV) is repealed, effective July 1, 2013.

(V) (A) For the state fiscal year commencing July 1, 2012, four million dollars.

(B) This subparagraph (V) is repealed, effective July 1, 2014.

(VI) (A) For the state fiscal year commencing July 1, 2013, six million six hundred thousand dollars.

(B) This subparagraph (VI) is repealed, effective July 1, 2015.

(f) For providing energy-related assistance to low-income households as specified in section 40-8.7-112, C.R.S.:

(I) to (III) Repealed.

(IV) (A) For the state fiscal year commencing July 1, 2011, six million five hundred thousand dollars as follows: Fifty percent to the department of human services low-income energy assistance fund created in section 40-8.7-112 (1), C.R.S., and fifty percent to the energy outreach Colorado low-income energy assistance fund created in section 40-8.7-112 (2) (a), C.R.S.

(B) This subparagraph (IV) is repealed, effective July 1, 2013.

(V) (A) For the state fiscal year commencing July 1, 2012, and each state fiscal year thereafter through the state fiscal year commencing July 1, 2018, thirteen million dollars as follows: Twenty-five percent to the department of human services low-income energy assistance fund created in section 40-8.7-112 (1), C.R.S.; twenty-five percent to the energy outreach Colorado low-income energy assistance fund created in section 40-8.7-112 (2) (a), C.R.S.; and fifty percent to the Colorado energy office low-income energy assistance fund created in section 40-8.7-112 (3) (a), C.R.S.

(B) This subparagraph (V) is repealed, effective July 1, 2020.

(g) Repealed.

(h) (I) To the agriculture value-added cash fund created in section 35-75-205 (1), C.R.S., to promote agricultural energy-related projects and research, for the state fiscal year commencing July 1, 2008, through the state fiscal year commencing July 1, 2016, five hundred thousand dollars.

(II) This paragraph (h) is repealed, effective July 1, 2018.

(i) To the interbasin compact committee operation fund created in section 37-75-107, C.R.S., the following amounts:

(I) Repealed.

(II) For the state fiscal year commencing July 1, 2009, and for each state fiscal year thereafter, seven hundred forty-five thousand sixty-seven dollars.

(j) Repealed.

(k) (I) For nine state fiscal years, beginning with the state fiscal year commencing on July 1, 2008, one million dollars per year to the forest restoration program cash fund created in section 23-31-310 (8.5), C.R.S.

(II) This paragraph (k) is repealed, effective July 1, 2018.

(l) Repealed.

(m) For the mitigation of aquatic nuisance species as specified in article 10.5 of title 33, C.R.S.:

(I) Repealed.

(II) For the state fiscal year commencing July 1, 2009, and every state fiscal year thereafter, four million six thousand five dollars as follows: Two million seven hundred one thousand four hundred sixty-one dollars to the division of parks and outdoor recreation aquatic nuisance species fund created in section 33-10.5-108 (1), C.R.S.; and one million three hundred four thousand five hundred forty-four dollars to the division of wildlife aquatic nuisance species fund created in section 33-10.5-108 (2), C.R.S.

(n) (I) For eight fiscal years commencing on or after July 1, 2009, the state treasurer shall transfer:

(A) One million four hundred fifty thousand dollars of the moneys in the account to the healthy forests and vibrant communities fund created in section 23-31-313 (10), C.R.S.

(B) Fifty thousand dollars of the moneys in the account to the wildland-urban interface training fund created in section 24-33.5-1212 (5), C.R.S.

(II) This paragraph (n) is repealed, effective July 1, 2018.

(3) (a) Except as provided in paragraph (b) of this subsection (3), it is the intent of the general assembly that the operational account maintain a reserve equal to the current state fiscal year's operating appropriations for the programs specified in subsection (1) of this section plus fifteen percent of the current fiscal year's transfers specified in subsection (2) of this section. Moneys may be transferred from the reserve to offset temporary revenue reductions in the programs specified in subsection (1) of this section and to offset reductions for programs specified in subsection (2) of this section, up to fifteen percent of the current fiscal year's transfers specified in subsection (2) of this section; except that, if the general assembly determines that transfers of moneys from the reserve are needed during a state revenue crisis, the transfers shall be a loan from the reserve to be repaid as soon as moneys are available. This provision is intended to mitigate the impact of fluctuations in the amount of revenue credited to the fund from year to year so as to maintain current levels of service for the programs specified in subsection (1) of this section.

(b) (I) For the state fiscal year commencing July 1, 2012, the reserve requirement set forth in paragraph (a) of this subsection (3) is reduced to the current state fiscal year's operating appropriations for the programs specified in subsection (1) of this section minus one million dollars, plus fifteen percent of the current fiscal year's transfers specified in subsection (2) of this section.

(II) This paragraph (b) is repealed, effective July 1, 2014.

(4) (a) Except as provided in paragraphs (b) and (c) of this subsection (4), all transfers specified in subsection (2) of this section shall be made by the state treasurer in three installments, as follows:

(I) Forty percent on July 1;

(II) Thirty percent on January 4;

(III) Thirty percent on April 1.

(b) (I) If the revenue estimate prepared by the staff of the legislative council in June of any fiscal year indicates that the amount of severance tax revenues to be credited to the operational account in the next fiscal year as specified in section 39-29-109 (2) (b) is insufficient for the state treasurer to make the transfers set forth in subsection (2) of this section and to meet the reserve requirement specified in subsection (3) of this section, all transfers scheduled to be made on July 1 shall be proportionally reduced. The July 1 proportional reduction shall be calculated based on the size of the annual transfers as specified in subsection (2) of this section and shall be made to the extent necessary to cover forty percent of the projected shortfall between total moneys available in the operational account and the sum of the total operating appropriations for the programs specified in subsection (1) of this section, the total fiscal year's transfers specified in subsection (2) of this section, and the reserve requirement specified in subsection (3) of this section; except that up to one-third of the fifteen percent of the current fiscal year's transfers specified as part of the reserve set forth in subsection (3) of this section shall be used to offset any proportional reduction required by this subparagraph (I) in any fiscal year.

(II) If the revenue estimate prepared by the staff of the legislative council in December of any fiscal year indicates that the amount of severance tax revenues credited to the operational account as specified in section 39-29-109 (2) (b) is insufficient for the state treasurer to make the transfers set forth in subsection (2) of this section and to meet the reserve requirement specified in subsection (3) of this section, all transfers scheduled to be made on January 4 of the fiscal year shall be proportionally reduced. The January 4 proportional reduction shall be calculated based on the size of the annual transfers as specified in subsection (2) of this section and shall be made to the extent necessary to cover seventy percent of the projected shortfall between total moneys available in the operational account and the sum of the total operating appropriations for the programs specified in subsection (1) of this section, the total fiscal year's transfers specified in subsection (2) of this section, and the reserve requirement specified in subsection (3) of this section; except

that up to one-third of the fifteen percent of the current fiscal year's transfers specified as part of the reserve set forth in subsection (3) of this section shall be used to offset any proportional reduction required by this subparagraph (II) in any fiscal year.

(III) If the revenue estimate prepared by the staff of the legislative council in March of any fiscal year indicates that the amount of severance tax revenues credited to the operational account as specified in section 39-29-109 (2) (b) is insufficient for the state treasurer to make the transfers set forth in subsection (2) of this section and to meet the reserve requirement specified in subsection (3) of this section, all transfers scheduled to be made on April 1 of the fiscal year shall be proportionally reduced. The April 1 proportional reduction shall be calculated based on the size of the annual transfers as specified in subsection (2) of this section and shall be made to the extent necessary to cover the projected shortfall between total moneys available in the operational account and the sum of the total operating appropriations for the programs specified in subsection (1) of this section, the total fiscal year's transfers specified in subsection (2) of this section, and the reserve requirement specified in subsection (3) of this section; except that any moneys remaining of the fifteen percent of the current fiscal year's transfers specified as part of the reserve set forth in subsection (3) of this section shall be used to offset any proportional reduction required by this subparagraph (III) in any fiscal year.

(IV) If proportional reductions are made to either the July 1 or January 4 installments, the April 1 installment may be increased to offset proportional reductions made earlier in the current fiscal year to the maximum extent allowable under the revenue estimate prepared by the staff of the legislative council in March of any fiscal year. The April 1 installment shall only be increased if the revenue estimate indicates that the amount of severance tax revenues credited to the operational account as specified in section 39-29-109 (2) (b) is sufficient to fund such increased installments and still meet the reserve requirement specified in subsection (3) of this section.

(c) (I) Except as provided in paragraph (b) of this subsection (4), the state treasurer shall make the transfers specified in paragraph (f) of subsection (2) of this section as follows:

(A) The transfers to the Colorado energy office low-income energy assistance fund shall be made on July 1;

(B) The transfers to the department of human services low-income energy assistance fund shall be made on January 4;

(C) The transfers to the energy outreach Colorado low-income energy assistance fund shall be made on April 1.

(II) If there are proportional reductions made to the transfers specified in this paragraph (c) pursuant to paragraph (b) of this subsection (4), the treasurer shall transfer on July 1 of the following fiscal year the amount of the proportional reduction to the fund that should have received that money from the funding for the following fiscal year as specified in paragraph (f) of subsection (2) of this section and shall then distribute the remaining funding for the following fiscal year pursuant to the percentages specified in said paragraph (f).

(5) In addition to the distributions specified in paragraph (a) of subsection (4) of this section, if there were any proportional reductions required in a fiscal year as specified in paragraph (b) of said subsection (4), after the reserve specified in subsection (3) of this section is made whole if any portion of the reserve was used as specified in paragraph (b) of subsection (4) of this section to offset any proportional reduction required by said paragraph (b) of subsection (4), the state treasurer shall make proportional distributions on August 20 of the following fiscal year to the programs specified in subsection (2) of this section if the revenues actually received in the operational account of the severance tax trust fund for the previous fiscal year were sufficient for the state treasurer to more fully make the transfers set forth in subsection (2) of this section and to fully meet the reserve requirement specified in subsection (3) of this section.

(6) (a) Notwithstanding any provision of this section to the contrary, on April 15, 2010, the state treasurer shall deduct eleven million dollars from the operational account and transfer such sum to the general fund.

(b) Notwithstanding any provision of this section to the contrary, on June 30, 2012, the state treasurer shall deduct three million nine hundred fifty thousand dollars from the operational account and transfer such sum to the general fund.

Source: L. 2008: Entire section added, p. 1863, § 2, effective June 2; (2)(j) added, p. 978, § 3, effective May 21; (2)(f) and IP(4)(a) amended and (4)(c) added, pp. 1328, 1336, §§ 3, 10, effective May 27; (2)(k) added, p. 1535, § 5, effective May 28; (2)(d)(I)(A) and (2)(e)(I)(A) amended, p. 1581, § 6, effective May 29; (2)(d)(I)(A) and (2)(e)(I)(A) amended and (2)(m) added, p. 1591, §§ 9, 8, effective May 29; (2)(l) added, p. 1576, § 33, effective May 29; (1) amended, p. 1689, § 2, effective June 2. **L. 2009:** (2)(a)(I)(A), (2)(a)(I)(B), (2)(c)(I)(B), (2)(d)(II)(A), (2)(e)(II)(A), (2)(f)(II)(A), (2)(n)(I)(A), and (2)(n)(II) amended and (2)(f)(V) added, (SB 09-293), ch. 370, pp. 2008, 2010, §§ 1, 3, effective June 1; (2)(i) amended, (SB 09-125), ch. 328, p. 1751, § 22, effective June 1; (2)(n) added, (HB 09-1199), ch. 411, p. 2277, § 2, effective June 3; (2)(a) amended, (SB 09-106), ch. 386, p. 2090, § 2, effective July 1; (2)(h) amended, (SB 09-124), ch. 256, p. 1162, § 2, effective July 1. **L. 2010:** (2)(f)(III)(A) and (2)(f)(IV)(A) amended, (HB 10-1319), ch. 28, p. 103, § 1, effective March 18; (1)(a)(I), (1)(f), (2)(a)(I)(C), (2)(a)(I)(D) amended and (2)(a)(I)(E) added, (HB 10-1326), ch. 36, pp. 140, 141, §§ 1, 2, effective March 22; (6) added, (HB 10-1327), ch. 135, p. 451, § 9, effective April 15; (2)(c)(I)(A) and (2)(c)(III) amended, (SB 10-025), ch. 379, p. 1775, § 2, effective June 7; (2)(d)(IV)(A) amended and (2)(d)(V), (2)(d)(VI), (2)(e)(IV), (2)(e)(V), and (2)(e)(VI) added, (HB 10-1398), ch. 380, pp. 1777, 1778, §§ 4, 5, effective June 7. **L. 2011:** (2)(b)(IV) added, (HB 11-1156), ch. 134, p. 471, § 2, effective May 4; (6) amended, (SB 11-226), ch. 190, p. 735, § 7, effective May 19; (2)(e)(IV)(A), (2)(e)(V)(A), and (2)(e)(VI)(A) amended, (SB 11-203), ch. 231, p. 989, § 3, effective May 27. **L. 2012:** (2)(f)(V) amended, (HB 12-1028), ch. 60, p. 217, § 1, effective March 24; (2)(k) and (2)(n) amended, (HB 12-1032), ch. 69, p. 239, § 4, effective March 24; (3), (4)(b), and (5) amended, (HB 12-1353), ch. 221, p. 947, § 1, effective May 24; IP(2)(d), (2)(d)(III), (2)(d)(IV), (2)(d)(V), and (2)(d)(VI) repealed and IP(2)(e), (2)(e)(V)(A), and (2)(e)(VI)(A) amended, (HB 12-1349), ch. 282, p. 1635, § 4, effective June 8; (2)(f)(V)(A) and (4)(c)(I)(A) amended, (HB 12-1315), ch. 224, p. 978, § 46, effective July 1; (2)(h) amended, (HB 12-1334), ch. 219, p. 938, § 2, effective July 1. **L. 2012, 1st Ex. Sess.:** IP(2)(a)(I) amended, (SB 12S-002), ch. 1, p. 2422, § 20, effective May 19.

Editor's note: (1) Subsection (2)(m) was originally numbered as (2)(i) in Senate Bill 08-226 but has been renumbered on revision for ease of location.

(2) Amendments to subsection (2)(a) by Senate Bill 09-106 and Senate Bill 09-293 were harmonized.

(3) (a) Subsections (2)(a)(I)(A), (2)(b)(I)(B), (2)(d)(I)(B), (2)(e)(I)(B), and (2)(g)(II) provided for the repeal of subsections (2)(a)(I)(A), (2)(b)(I), (2)(d)(I), (2)(e)(I), and (2)(g), respectively, effective July 1, 2010. (See L. 2008, p. 1863.)

(b) Subsection (2)(f)(I)(D) provided for the repeal of subsection (2)(f)(I), effective July 1, 2010. (See L. 2008, p. 1328.)

(c) Subsection (2)(j)(II) provided for the repeal of subsection (2)(j), effective July 1, 2010. (See L. 2008, p. 978.)

(d) Subsection (2)(l)(II) provided for the repeal of subsection (2)(l), effective July 1, 2010. (See L. 2008, p. 1576.)

(e) Subsection (2)(m)(I)(B) provided for the repeal of subsection (2)(m)(I), effective July 1, 2010. (See L. 2008, p. 1591.)

(f) Subsection (2)(i)(I)(B) provided for the repeal of subsection (2)(i)(I), effective July 1, 2010. (See L. 2009, p. 1751.)

(4) Subsections (2)(a)(I)(B), (2)(b)(II)(B), (2)(d)(II)(B), (2)(e)(II)(B), and (2)(f)(II)(B) provided for the repeal of subsections (2)(a)(I)(B), (2)(b)(II), (2)(d)(II), (2)(e)(II), and (2)(f)(II), respectively, effective July 1, 2011. (See L. 2008, p. 1863.)

(5) Subsections (2)(a)(I)(C), (2)(b)(III)(B), (2)(e)(III)(B), and (2)(f)(III)(B) provided for the repeal of subsections (2)(a)(I)(C), (2)(b)(III), (2)(e)(III), and (2)(f)(III), respectively, effective July 1, 2012. (See L. 2008, p. 1863.)

(6) Amendments to subsection (2)(f)(V)(A) by House Bill 12-1028 and House Bill 12-1315 were harmonized.

Cross references: (1) For the legislative declaration contained in the 2008 act amending subsections (2)(d)(I)(A) and (2)(e)(I)(A), see section 1 of chapter 339, Session Laws of Colorado 2008.

(2) For the legislative declaration in the 2011 act amending subsections (2)(e)(IV)(A), (2)(e)(V)(A), and (2)(e)(VI)(A), see section 1 of chapter 231, Session Laws of Colorado 2011.

(3) For the legislative declaration in the 2012 act repealing the introductory portion to subsection (2)(d) and subsections (2)(d)(III), (2)(d)(IV), (2)(d)(V), and (2)(d)(VI) and amending the introductory portion to subsection (2)(e) and subsections (2)(e)(V)(A) and (2)(e)(VI)(A), see section 1 of chapter 282, Session Laws of Colorado 2012.

39-29-109.5. Interest differential - public school energy efficiency fund - creation - uses - definitions - repeal. (1) As used in this section, unless the context otherwise requires:

(a) "Colorado energy office" means the Colorado energy office created in section 24-38.5-101, C.R.S.

(a.5) "Fund" means the public school energy efficiency fund created in subsection (2) of this section.

(b) "Interest differential" means the increase in interest earned from the deposit and investment of the moneys in the severance tax funds that results from the requirement that amounts withheld pursuant to section 39-29-111 and estimated taxes owed pursuant to section 39-29-112 be paid monthly to the department of revenue, rather than quarterly, and the requirement that such amounts be paid electronically. For purposes of determining the interest differential based on the requirement that the amounts be paid electronically, it shall be assumed that a payment is received by the department two business days earlier than the payment otherwise would have been if it had been mailed.

(c) "Public school" means a school maintained and operated by a school district.

(d) "School district" means a school district organized and existing pursuant to law; except that "school district" does not include a junior college district.

(e) "Severance tax funds" means the state severance tax trust fund created in section 39-29-109 and the local government severance tax fund created in section 39-29-110.

(2) On December 1, 2007, and the first day of every third month thereafter up to and including September 1, 2015, the legislative council staff shall calculate the interest differential earned during the prior calendar quarter and notify the state treasurer of such amount. Upon receiving notice, the treasurer shall transfer an amount equal to the interest differential from the severance tax funds to the public school energy efficiency fund, which is hereby created in the state treasury; except that the total transfer to the fund for any state fiscal year shall not exceed one million five hundred thousand dollars. Moneys in the fund are hereby annually appropriated to the Colorado energy office for the purposes set forth in subsection (3) of this section. All income and interest derived from the deposit and investment of the moneys in the fund shall be credited to the fund.

(3) The Colorado energy office shall use moneys appropriated from the fund to establish and manage a program to improve energy efficiency in public schools. In administering the program, the office shall give consideration to whether a public school or school district is located in an area socially or economically impacted by the development, processing, or energy conversion of minerals and mineral fuels subject to taxation under this article. The program shall include the following features:

(a) Assisting school districts in financing energy efficiency upgrades for public schools through energy performance contracts, as defined in section 29-12.5-101 (3), C.R.S.;

(b) Assisting in the design of new public school buildings that are more energy efficient;

(c) Assisting school districts in increasing the effectiveness of their utility budget management;

(d) Providing training and supporting resources related to energy efficiency for school districts; and

(e) Providing funding for the administration of the renewable energy and energy efficiency for schools loan program created in section 22-92-104, C.R.S.

(4) During the 2007 legislative interim, the interim committee to study the allocation of severance tax and federal mineral lease revenues, which was created in Senate Joint

Resolution 07-042, enacted at the first regular session of the sixty-sixth general assembly, shall study the allocation of the interest differential required by this section.

(5) This section is repealed, effective July 1, 2017.

Source: **L. 2007:** Entire section added, p. 1409, § 4, effective May 30. **L. 2008:** (1)(a.5) added and (2) and IP(3) amended, pp. 74, 75, §§ 14, 15, effective March 18. **L. 2009:** (3)(c), (3)(d), and (5) amended and (3)(e) added, (HB 09-1312), ch. 253, p. 1145, § 4, effective August 5. **L. 2011:** (2) amended, (SB 11-230), ch. 305, p. 1468, § 11, effective June 9. **L. 2012:** (1)(a), (1)(a.5), (2), and IP(3) amended, (HB 12-1315), ch. 224, p. 979, § 47, effective July 1.

Cross references: (1) For the legislative declaration stating the purpose of, and the provision directing legislative staff agencies to conduct, a post-enactment review pursuant to § 2-2-1201 scheduled in 2011, see sections 1 and 5 of chapter 253, Session Laws of Colorado 2009. To obtain a copy of the review, once completed, view Colorado Legislative Council's web site.

(2) For the legislative declaration in the 2011 act amending subsection (2), see section 1 of chapter 305, Session Laws of Colorado 2011.

39-29-110. Local government severance tax fund - creation - administration - definitions. (1) (a) (I) There is hereby created in the department of local affairs a local government severance tax fund. In accordance with section 39-29-108, portions of the state severance tax receipts shall be credited to the local government severance tax fund. Except as otherwise provided in section 39-29-109.5, all income derived from the deposit and investment of the moneys in the local government severance tax fund shall be credited to the local government severance tax fund.

(II) Repealed.

(III) After making any distributions pursuant to subparagraph (II) of this paragraph (a), the executive director of the department of local affairs shall distribute any remaining moneys and make loans from such fund in accordance with the purposes and priorities provided in paragraph (b) of this subsection (1). The executive director shall not distribute any moneys or make any loans from such fund unless sufficient moneys remain in the fund to be distributed to each county pursuant to subparagraph (II) of this paragraph (a).

(b) (I) Seventy percent of the funds from the local government severance tax fund shall be distributed to those political subdivisions socially or economically impacted by the development, processing, or energy conversion of minerals and mineral fuels subject to taxation under this article and used for the planning, construction, and maintenance of public facilities and for the provision of public services. Such funds shall also be distributed to political subdivisions to compensate them for loss of property tax revenue resulting from the deduction of severance taxes paid in the determination of the valuation for assessment of producing mines. The executive director of the department of local affairs shall consider the economic needs of a political subdivision for purposes of making distributions pursuant to this subparagraph (I).

(II) (A) In addition to the distribution of moneys authorized under subparagraph (I) of this paragraph (b), the executive director may distribute moneys or make loans, or any combination thereof, to such political subdivisions for the planning, design, construction, erection, building, acquisition, alteration, modernization, reconstruction, improvement, or expansion of domestic wastewater treatment works or potable water treatment facilities. Any loan made by the executive director under the authority of this section shall only be made under such terms as will insure repayment of the loan with interest assessed and collected at an interest rate of not less than five percent.

(B) As used in this subparagraph (II), "domestic wastewater treatment works" means a system or facility of a political subdivision for treating, neutralizing, stabilizing, collecting, or disposing of domestic wastewater, which system or facility has a designed capacity to receive more than two thousand gallons of domestic wastewater per day, and "domestic wastewater treatment works" includes appurtenances to such system or facility, such as outfall sewers, pumping stations, and collection and interceptor lines, and the equipment related to such appurtenances.

(C) As used in this subparagraph (II), "potable water treatment facilities" means a system or facility of a political subdivision for treating water to be supplied to the public for domestic use, and "potable water treatment facilities" includes water treatment plants, treated water storage facilities, water mains, water distribution lines, pumps, and appurtenances.

(III) In addition to the distribution of moneys authorized under subparagraphs (I) and (II) of this paragraph (b), the executive director shall distribute:

(A) Moneys to the uranium mill tailings remedial action program fund in accordance with the provisions of section 39-29-116 (3);

(B) Moneys to the department of public health and environment for any direct and indirect costs associated with the monitoring, notification, and handling of designated uranium mill tailings that are authorized in section 25-11-303, C.R.S., and the amount of the distribution made pursuant to this sub-subparagraph (B) shall be equal to the amount appropriated to the department of public health and environment by the general assembly for such direct and indirect costs; and

(C) Up to fifty thousand dollars each state fiscal year to political subdivisions that include mill sites designated for cleanup pursuant to federal Public Law 95-604 for reimbursement of actual, documented costs related to the cleanup of uranium mill tailings.

(IV) In addition to the distribution of moneys authorized under subparagraphs (I), (II), and (III) of this paragraph (b), the executive director may distribute moneys to those privately organized volunteer fire departments serving areas socially or economically impacted by the development, processing, or energy conversion of minerals and mineral fuels subject to taxation under this article, for the purpose of purchasing equipment to fight fires.

(c) (I) For state fiscal years commencing prior to July 1, 2008, an amount equal to thirty percent of said gross receipts credited to the local government severance tax fund shall be distributed to counties or municipalities on the basis of the proportion of employees of the mine or related facility or crude oil, natural gas, or oil and gas operation who reside in any such county's unincorporated area or in any such municipality to the total number of employees of the mine or related facility or crude oil, natural gas, or oil and gas operation. Such distribution shall be made on the basis of the report required in paragraph (d) of this subsection (1). For state fiscal years commencing on or after July 1, 2008, thirty percent of said gross receipts credited to the local government severance tax fund shall be allocated to counties based upon the following factors:

(A) On the basis of the report required in paragraph (d) of this subsection (1), the proportion of employees of mines or related facilities or crude oil, natural gas, or oil and gas operations who reside in a county to the total number of employees of mines or related facilities or crude oil, natural gas, or oil and gas operations who reside in the state;

(B) The proportion of the mine and well permits issued in a county to the total number of such permits issued in the state; and

(C) The proportion of the overall quantity of mineral production within a county to the total overall quantity of production within the state.

(II) (A) For the state fiscal year commencing on July 1, 2008, the factor set forth in sub-subparagraph (A) of subparagraph (I) of this paragraph (c) shall be weighted fifty percent and the factors set forth in sub-subparagraphs (B) and (C) of subparagraph (I) of this paragraph (c) shall be weighted twenty-five percent each.

(B) For state fiscal years commencing on or after July 1, 2009, each of the three factors set forth in subparagraph (I) of this paragraph (c) shall be weighted thirty percent, and the executive director of the department of local affairs, in consultation with the energy impact assistance advisory committee established pursuant to section 34-63-102 (5) (b) (I), C.R.S., shall establish guidelines that set forth the factor or factors under which the remaining ten percent shall be weighted.

(III) Except as otherwise set forth in subparagraph (IV) of this paragraph (c), the moneys allocated to each county pursuant to this paragraph (c) shall be further distributed to the county and to each municipality within the county based upon the following factors:

(A) The proportion of employees reported as residents under paragraph (d) of this subsection (1) in any such county's unincorporated area or in any such municipality within

the county to the total number of employees reported as residents in the county as a whole under paragraph (d) of this subsection (1);

(B) The proportion of the population in any such county's unincorporated area or in any such municipality within the county to the total population in the county, as such population is reported in the most recently published population estimate from the state demographer appointed by the executive director of the department of local affairs; and

(C) The proportion of road miles in any such county's unincorporated area or in any such municipality within the county to the total road miles in the county, as such miles are certified by the department of transportation to the state treasurer pursuant to sections 43-4-207 (2) (d) and 43-4-208 (3), C.R.S.

(IV) With respect to the distribution made pursuant to subparagraph (III) of this paragraph (c), the executive director of the department of local affairs, in consultation with the energy impact assistance advisory committee established pursuant to section 34-63-102 (5) (b) (I), C.R.S., shall establish guidelines that set forth the weight that each of the factors in sub-subparagraphs (A) to (C) of subparagraph (III) of this paragraph (c) shall be given. These guidelines shall apply uniformly across the state; except that the executive director may:

(A) Accept a memorandum of understanding from a county and all municipalities contained therein that establishes an alternative distribution that shall be effective within such county; and

(B) After consultation with the energy impact advisory committee established pursuant to section 34-63-102 (5) (b) (I), C.R.S., vary the weight that each of the factors in sub-subparagraphs (A) to (C) of subparagraph (III) of this paragraph (c) receives in an individual county, in order to more fairly distribute the gross receipts among the county and all municipalities contained therein.

(V) Moneys distributed from the local government severance tax fund pursuant to this paragraph (c) shall be distributed no later than August 31 of each year. Counties and municipalities shall utilize revenues received under this subsection (1) only for the purposes of capital expenses and general operating expenses.

(VI) On or before January 1, 2010, and every second January 1 thereafter, the executive director of the department of local affairs shall submit to each member of the general assembly a report that evaluates the effectiveness of the allocation and distribution of moneys pursuant to this paragraph (c) to counties and municipalities impacted by the development, processing, or energy conversion of minerals and mineral fuels subject to taxation under this article, and, if appropriate, that proposes changes to the allocation and distribution. The provisions of section 24-1-136 (1) (a) (I), C.R.S., shall not apply to the report.

(c.5) (Deleted by amendment, L. 2008, p. 1680, § 6, effective August 5, 2008.)

(d) (I) (A) Ninety days prior to the end of each fiscal year, for each taxable year to which this sub-subparagraph (A) applies, the executive director of the department of revenue shall send every producer who is subject to the severance tax and whose payment is subject to the distribution formula provided in this subsection (1) a form on which the producer shall submit a report to the department of revenue indicating the following: The name and address of the producer, the name of the mine, related facility, or operation, the names of the municipalities or counties in which its employees maintain their actual residences as given by the employees, giving the number of employees for each such municipality or unincorporated area of each such county, and the total number of employees of the mine or related facility or crude oil, natural gas, or oil and gas operation. The producer may use and submit any other report form in lieu of the state form sent by the executive director of the department of revenue that contains the same information as prescribed in the state form. The report shall be due April 30 of each year. The executive director of the department of revenue shall submit a copy of the report required by this paragraph (d) to the executive director of the department of local affairs. In the case of failure of any producer to submit the report on or before the date required by this paragraph (d) to the department of revenue, a written notice shall be sent to the producer by the department of revenue by first-class mail as set forth in section 39-21-105.5 stating that the producer has failed to submit a copy of the report required by this paragraph (d) and

informing the producer of the penalty provision contained in this paragraph (d). If the producer fails within forty-five days after receipt of the written notice to submit the required report, there shall be levied and collected a penalty for the failure in the amount of fifty dollars for each day, or portion thereof, during which the failure continues. Any moneys and interest collected under this paragraph (d) shall be added to the fifteen percent of gross receipts from the local government severance tax fund and distributed to counties or municipalities in the manner prescribed by paragraph (c) of this subsection (1). Moneys distributed from the local government severance tax fund pursuant to paragraph (c) of this subsection (1) shall be distributed no later than August 31 of each year. Any producer not liable for severance tax under this section shall not be required to submit a report under this subsection (1). This sub-subparagraph (A) shall apply to any report for a taxable year commencing prior to January 1, 2008.

(B) Every party that registers exempt production with the department of revenue, withholds income pursuant to section 39-29-111 (1), or files a declaration pursuant to section 39-29-104 (2) or 39-29-112 (2) shall submit a report to the department of local affairs in a format specified by the executive director of the department indicating the following: The name and address of the party; the name of the mine, related facility, or operation; the names of the municipalities or counties in which the party's employees maintain their actual residences as given by the employees, giving the number of the employees for each such municipality or unincorporated area of each such county; and the total number of the employees of the mine or related facility or crude oil, natural gas, or oil and gas operation. The report shall be due April 30 of each year. This sub-subparagraph (B) shall apply to any report for a taxable year commencing on or after January 1, 2008.

(II) (A) (Deleted by amendment, L. 2008, p. 1680, § 6, effective August 5, 2008.)

(B) For purposes of this paragraph (d), an "employee of a crude oil, natural gas, or oil and gas operation" means any individual who is employed and compensated for at least five hundred hours of work in any six months during the calendar year preceding the due date of the report by a producer, interest owner, or party who contracts with a producer or interest owner for the purposes of extracting such crude oil, natural gas, or oil and gas out of the ground and at point of first sale.

(C) In the case of failure of any party to submit the report required pursuant to sub-subparagraph (B) of subparagraph (I) of this paragraph (d) on or before the required date to the department of local affairs, a written notice shall be sent to the party by the department by first-class mail stating that the party has failed to submit a copy of the report required by sub-subparagraph (B) of subparagraph (I) of this paragraph (d) and informing the party of the penalty provision contained in this sub-subparagraph (C). If the party fails within forty-five days after receipt of the written notice to submit the required report, there shall be levied and collected a penalty for the failure in the amount of fifty dollars for each day, or portion thereof, during which the failure continues. Any moneys and interest collected under this sub-subparagraph (C) shall be added to the thirty percent of gross receipts from the local government severance tax fund distributed to counties or municipalities in the manner prescribed by paragraph (c) of this subsection (1). The notice required pursuant to this sub-subparagraph (C) shall be sent in accordance with the provisions of section 39-21-105.5, and the provisions of that section shall otherwise apply to the notice.

(e) and (f) (Deleted by amendment, L. 2008, p. 1680, § 6, effective August 5, 2008.)

(2) Repealed.

(2.5) In accordance with the provisions of section 34-63-102 (5) (b) (I), C.R.S., the energy impact assistance advisory committee established pursuant to said section shall make recommendations to the executive director of the department of local affairs regarding the distribution of moneys authorized pursuant to this section.

(3) The executive director of the department of local affairs shall deliver to the state auditor and file with the general assembly annually before February 1 a detailed report accounting for the distribution of all funds for the previous year. The energy impact assistance advisory committee shall review the report prior to it being delivered and filed.

(4) Repealed.

(5) Notwithstanding any provision of this section to the contrary, on June 1, 2009, the state treasurer shall deduct seven million five hundred thousand dollars from the local government severance tax fund and transfer such sum to the general fund.

(6) Notwithstanding any provision of this section to the contrary, on April 15, 2010, the state treasurer shall deduct fifty million three hundred twenty-seven thousand seven hundred ninety-six dollars from the local government severance tax fund and transfer such sum to the general fund.

(7) Notwithstanding any provision of this section to the contrary:

(a) On June 30, 2011, the state treasurer shall deduct seventy million dollars from the local government severance tax fund and transfer such sum to the general fund.

(b) Due to the transfer made pursuant to paragraph (a) of this subsection (7), for the state fiscal year commencing on July 1, 2010, the amount of the gross receipts credited to the local government severance tax fund that are distributed pursuant to paragraph (b) of subsection (1) of this section shall be decreased by three million dollars and the amount of gross receipts that are distributed pursuant to paragraph (c) of subsection (1) of this section shall be increased by three million dollars.

(c) On June 30, 2012, the state treasurer shall deduct forty-one million dollars from the local government severance tax fund and transfer such sum to the general fund.

Source: **L. 77:** Entire article added, p. 1848, § 1, effective January 1, 1978. **L. 81:** (1)(c) and (1)(d) amended, p. 1903, § 3, effective June 19. **L. 82:** (1)(d) amended, p. 581, § 1, effective April 6. **L. 85:** (1)(a) and (1)(b) amended, p. 1290, § 1, effective May 31. **L. 86:** (2)(c) added, p. 426, § 65, effective March 26. **L. 88:** (2) repealed, p. 319, § 18, effective April 14. **L. 93:** (1)(b)(III) added, p. 448, § 5, effective April 19. **L. 96:** (1)(d)(I) amended, p. 168, § 12, effective July 1. **L. 97:** (1)(a) amended, p. 1147, § 2, effective May 28. **L. 98:** (1)(a)(II) amended, p. 829, § 54, effective August 5. **L. 99:** (1)(a)(I) amended, p. 927, § 6, effective May 24. **L. 2002, 3rd Ex. Sess.:** (1)(b)(IV) added, p. 39, § 8, effective July 17. **L. 2005:** (4) added, p. 414, § 3, effective April 28. **L. 2007:** (1)(b)(I) and (1)(c) amended and (1)(c.5) added, p. 1338, § 1, effective May 29; (1)(b)(III) amended, p. 1366, § 1, effective May 29; (1)(a)(I) amended, p. 1410, § 5, effective May 30. **L. 2008:** (1)(b)(I), (1)(c), (1)(c.5), (1)(d), (1)(e), (1)(f), and (3) amended and (2.5) added, p. 1680, § 6, effective August 5. **L. 2009:** (5) added, (SB 09-279), ch. 367, p. 1932, § 23, effective June 1; (1)(d)(II)(C) amended, (SB 09-292), ch. 369, p. 1980, § 116, effective August 5. **L. 2010:** (6) added, (HB 10-1327), ch. 135, p. 451, § 10, effective April 15; (7) added, (HB 10-1388), ch. 362, p. 1717, § 3, effective June 7. **L. 2011:** (7)(a) amended, (SB 11-164), ch. 33, p. 94, § 10, effective March 18; (7)(c) added, (SB 11-226), ch. 190, p. 735, § 8, effective May 19; (1)(a)(II) repealed, (SB 11-238), ch. 300, p. 1446, § 3, effective June 8.

Editor's note: Subsection (4)(b) provided for the repeal of subsection (4), effective July 1, 2007. (See L. 2005, p. 414.)

Cross references: For the legislative declaration contained in the 1999 act amending subsection (1)(a)(I), see section 1 of chapter 235, Session Laws of Colorado 1999.

39-29-111. Withholding of income from oil and gas interest. (1) (a) Every producer or purchaser who disburses funds that are owed to any person owning a working interest, a royalty interest, a production payment, or any other interest in any oil or gas produced in Colorado shall, unless such production is exempt under section 39-29-105 (1) and the producer or purchaser has registered such exempt production with the department of revenue in accordance with rules promulgated by the department, withhold from the amount owed to such person an amount equal to one percent of the gross income from such interest, except for income accruing to the United States or the state of Colorado or to any political subdivision of the state of Colorado. The amount withheld shall be based on gross income as defined in section 39-29-102 (3) (a). On or before each March 1, June 1, September 1, and December 1 prior to July 1, 2007, the aggregate of all such amounts withheld during the prior calendar quarter shall be paid to the department; and, no later than such dates, a report covering the withholding of such amounts shall be filed with the department upon forms prescribed by the executive director. On the first day of each month beginning with July 1, 2007, the aggregate of all such amounts withheld during the calendar month that was three months prior thereto shall be paid to the department in the manner set

forth in paragraph (b) of this subsection (1). Nothing in this section shall be so construed as to reduce the tax imposed by this article.

(b) On and after July 1, 2007, all amounts paid to the department of revenue pursuant to paragraph (a) of this subsection (1) shall be remitted electronically. The department shall promulgate rules in accordance with article 4 of title 24, C.R.S., governing electronic payment.

(2) Every person making a return as required by section 39-29-112 may take credit for the amount withheld by the producer or the first purchaser against the tax shown to be due upon such return, and any overpayment shown on such return shall be refunded to the taxpayer.

(3) For the purposes of subsection (1) of this section, "producer" means every person producing or extracting oil shale or oil and gas deposits located within this state or the first purchaser of oil shale or oil and gas produced from deposits located within this state.

(4) On or before March 1 of each year, every producer or purchaser shall provide each person holding any interest pursuant to subsection (1) of this section with a statement of the amounts deducted and withheld pursuant to this section from disbursements made to such person during the preceding calendar year. Such statements shall be retained in the records of every producer or purchaser for a period of three years and shall be made available to the department of revenue upon the written request of the department.

Source: L. 77: Entire article added, p. 1850, § 1, effective January 1, 1978. L. 85: (1) R&RE, p. 1292, § 1, effective June 6. L. 89: (4) added, p. 1518, § 1, effective April 7. L. 2000: (1) and (4) amended, p. 1444, § 3, effective July 1. L. 2007: (1) amended, p. 1410, § 6, effective May 30.

39-29-112. Procedures and reports. (1) Except as set forth in subsections (6) and (7) of this section, every person subject to taxation under the provisions of this article shall make an annual return to the department of revenue, separate and apart from other returns required to be made under the provisions of articles 20 to 28 of this title, upon a form to be prescribed by the executive director. Such return shall be filed with the department of revenue on or before the fifteenth day of the fourth month following the end of the taxable year. Payment of the tax shown to be due shall be made at the time such return is filed. The executive director may grant a reasonable extension of time for filing returns and for paying the tax under such rules as he may prescribe. In the event of the failure to file the return within the time required or the extension of the time granted by the executive director, there shall be added to the tax a penalty as provided for in section 39-29-115.

(2) Every corporation subject to taxation under the provisions of this article shall make a declaration and payment of estimated tax if the tax imposed by this article for the taxable year can reasonably be expected to exceed one thousand dollars. Such declaration and payment shall be made to the department of revenue, separate and apart from other returns required under the provisions of articles 20 to 28 of this title, upon a form prescribed by the executive director. Such declaration shall be filed with and payment made to the department of revenue in accordance with the provisions of section 39-22-606.

(3) All unexpended balances in any oil shale and oil and gas severance tax withholding fund established to carry out the purposes of this article as of June 30, 1978, and on each June 30 thereafter, or at any time determined by the controller with the approval of the state treasurer shall be credited to the general fund of the state. Such unexpended balances shall include all moneys which for any reason cannot be refunded. All warrants covering refunds from said severance tax withholding fund which cannot for any reason be delivered to the taxpayer to whom due and which are not presented for payment within six months after the date of issuance thereof shall be void, and the moneys represented thereby shall be included in the unexpended balance in said fund at the expiration of any fiscal year. Persons entitled to the refunds of moneys represented by warrants which cannot be delivered to the taxpayer and which are not presented for payment within six months after the date of issuance thereof may file claims for refund at any time within four years after the date the tax return which establishes the right to the refund was required to be filed. Claims for refund not filed within the prescribed four-year period shall not be allowed or paid.

(4) The tax imposed by this article is hereby declared to be a special classified and limited tax in accordance with the provisions of section 17 of article X of the state constitution.

(5) The taxpayer's taxable year under this article shall be the same as his taxable year for federal income tax purposes.

(6) The provisions of subsections (1) to (3) and subsection (5) of this section shall not apply to persons filing quarterly declaration forms and making quarterly payments of tax pursuant to the provisions of section 39-29-104.

(7) A person is not required to make a separate, annual return to the department of revenue for a taxable year pursuant to subsection (1) of this section if:

(a) The person has less than two hundred fifty dollars withheld by all unit operators or first purchasers pursuant to section 39-29-111 (1) for the taxable year; and

(b) The amount of withholding is greater than or equal to the amount of tax levied pursuant to this article that is owed by the person for the taxable year.

Source: L. 77: Entire article added, p. 1850, § 1, effective January 1, 1978. L. 83: (1) amended, p. 1545, § 1, effective May 20. L. 86: (6) added, p. 1136, § 2, effective April 1. L. 2012: (1) amended and (7) added, (HB 12-1314), ch. 250, p. 1244, § 1, effective August 8.

39-29-113. Exemption prohibited - when. (1) If any person likely to be liable for taxes imposed pursuant to the provisions of this article transfers all or part of his property to another person controlled, directly or indirectly, by the transferor before or after the transfer, the executive director may disallow to the transferee any exemption from tax otherwise authorized pursuant to this article unless such transferee establishes by a clear preponderance of the evidence that the securing of such an exemption was not a major purpose of such transfer.

(2) As used in this section, "control" means:

(a) The ownership, directly or indirectly, of more than fifty percent of the voting stock of the transferee corporation; or

(b) With respect to a transferee other than a corporation, that the transferor owns, during any part of the transferee's taxable year, a greater economic interest than any other owner of the transferee.

Source: L. 77: Entire article added, p. 1851, § 1, effective January 1, 1978.

39-29-114. Component members of a controlled group treated as one taxpayer. (1) For the purposes of this article, persons who are members of the same controlled group of corporations shall be treated as one taxpayer.

(2) If fifty percent or more of the beneficial interest in two or more corporations, trusts, or estates is owned by the same or related persons (taking into account only persons who own at least five percent of such beneficial interest), the exemptions allowed under this article shall be allocated among all such entities in proportion to their respective quantities of production from the property of such entities.

(3) In the case of individuals who are members of the same family, the exemptions allowed under this article shall be allocated among such individuals in proportion to their respective quantities of production from the property of such individuals. For the purposes of this article, the family of an individual shall be deemed to include only his spouse and children.

(4) For the purposes of this section, the term "controlled group of corporations" has the meaning given to such term by the "Internal Revenue Code of 1986", in section 613A, as of January 1, 1987. The change of the reference in this section from the "Internal Revenue Code of 1954" to the "Internal Revenue Code of 1986" shall not affect any act done or any

right accrued or accruing before or after such change, but all rights and liabilities shall continue and may be enforced in the same manner as if such references had not been changed.

Source: L. 77: Entire article added, p. 1851, § 1, effective January 1, 1978. L. 88: (4) amended, p. 1327, § 6, effective April 6.

39-29-115. Penalties and interest. (1) Any person who fails to file a report or to pay the tax due thereon shall pay a penalty of thirty percent of the tax assessed or thirty dollars, whichever is greater, and the interest due under the provisions of section 39-21-110.5.

(1.5) Any person who fails to withhold income and make a payment required pursuant to section 39-29-111 shall pay a penalty of up to thirty percent of the required payment or thirty dollars, whichever is the greater amount, and the interest due under the provisions of section 39-21-110.5. Any person who withholds income pursuant to section 39-29-111 and who fails to file the annual report required by the rules promulgated by the department of revenue related to such withholding shall pay a penalty of up to fifteen percent of the amount of withholding that should have been reflected in the report or one thousand five hundred dollars, whichever is the lesser amount. The penalty set forth in this subsection (1.5) for failing to withhold income and make a payment shall not apply if the income was from a well that qualified for the exemption set forth in section 39-29-105 (1) (b) for the prior taxable year.

(2) Tax assessed pursuant to an error contained on a previously filed return which was due to negligence or disregard of the law shall have added thereto:

(a) A penalty of ten percent of the tax assessed; and

(b) Penalty interest of one-half of one percent per month, in addition to the interest due under section 39-21-110.5, on the tax assessed.

(3) (a) Except as set forth in paragraph (b) of this subsection (3), if any person fails, neglects, or refuses to file a report required by this article, the executive director may, upon such information as may be available to him, estimate the amount of tax due for the period for which no report was filed, with applicable penalties and interest, and mail such estimate to the last-known address of such person. The amount so estimated, together with the penalties and interest, shall become fixed, due, and payable, as if such person had filed a report showing such amounts unless, within ten days after receiving the estimate, such person files a true and correct report for the period and pays the tax, penalty, and interest due thereon.

(b) The executive director shall not send an estimate for a taxable year pursuant to paragraph (a) of this subsection (3) to a person who has less than two hundred fifty dollars withheld by all unit operators or first purchasers for the taxable year pursuant to section 39-29-111 (1), unless the executive director has good cause to believe that such person does not qualify for the exception to the filing requirement set forth in section 39-29-112 (7).

(4) The executive director may waive, for good cause shown, any of the penalties authorized by this section.

Source: L. 83: Entire section added, p. 1545, § 2, effective May 20. L. 85: (1) amended, p. 1263, § 26, effective January 1, 1986. L. 2010: (1.5) and (4) added, (HB 10-1060), ch. 277, p. 1269, § 1, effective September 1. L. 2012: (3) amended, (HB 12-1314), ch. 250, p. 1245, § 2, effective August 8.

39-29-116. Uranium mill tailings remedial action program fund - creation - oversight committee - repeal. (1) The general assembly hereby declares that the purpose of creating the uranium mill tailings remedial action program fund is to provide a funding source to match federal funds available under the federal "Uranium Mill Tailings Radiation Control Act of 1978", 42 U.S.C. 7901 et seq., for the purpose of cleaning up certain sites designated in Colorado for cleanup. The general assembly states that its intent in enacting this section is to assure that Colorado has those state moneys set aside in order to obtain the federal funds before those federal funds are completely used in cleaning up other sites or

are no longer available. The general assembly further intends that the amount of moneys transferred into this new fund from the severance tax trust fund and the amounts which will be awarded from the local government severance tax fund and the local government mineral impact fund should be sufficient to clean up all of the federal designated sites in Colorado without additional appropriation, transfers, or awards.

(2) There is hereby created in the office of the state treasurer the uranium mill tailings remedial action program fund for the sole purpose of providing a state match to federal funds available for the cleanup of uranium mill tailing sites as designated for cleanup under the federal "Uranium Mill Tailings Radiation Control Act of 1978", 42 U.S.C. sec. 7901 et seq. The fund shall consist of moneys transferred to the fund from the severance tax trust fund in accordance with section 39-29-109 (5) as it existed prior to its repeal and any other moneys made available or appropriated into the uranium mill tailings remedial action program fund pursuant to subsection (3) of this section. The moneys in the uranium mill tailings remedial action program fund available for remedial costs only shall not exceed fifty-seven million dollars. Moneys in the fund shall be subject to annual appropriation. All interest derived from the deposit and investment of moneys in the uranium mill tailings remedial action program fund shall be credited to such fund. Any unexpended and unencumbered moneys in the uranium mill tailings remedial action program fund at the end of the 1998-99 fiscal year shall be credited and transferred to the local government severance tax fund established pursuant to section 39-29-110.

(3) (a) The state treasurer may accept and credit to the uranium mill tailings remedial action program fund any donations received by the state for the express purpose of projects for the cleanup of uranium mill tailings. The donations may include any amounts made available from the local government severance tax fund and the local government mineral impact fund as directed by the executive director of the department of local affairs pursuant to section 39-29-110 and section 34-63-102, C.R.S., and with the approval of the oversight committee as created in subsection (4) of this section. It is the intent of the general assembly that a minimum of six million dollars be retained in the local government severance tax fund and the local government mineral impact fund for grants and loans to local communities.

(b) Before or during fiscal year 1993-94, the executive director of the department of local affairs shall distribute not less than five million dollars to the uranium mill tailings remedial action program fund from the local government mineral impact fund, the local government severance tax fund, or a combination thereof. The executive director shall determine the amount of moneys, if any, to be distributed from each fund.

(c) Before or during fiscal years 1994-95, 1995-96, and 1996-97, the executive director of the department of local affairs shall distribute in the aggregate not less than five million dollars to the uranium mill tailings remedial action program fund from the local government mineral impact fund, the local government severance tax fund, or a combination thereof; except that at least two and one-half million dollars shall be distributed before or during fiscal year 1995-96. The executive director shall determine the amount of moneys, if any, to be distributed from each fund.

(d) For fiscal years after 1996-97, the executive director of the department of local affairs may distribute moneys from the local government mineral impact fund and the local government severance tax fund pursuant to sections 34-63-102 and 39-29-110 (1) (b) (III) (A), C.R.S., respectively.

(4) (a) There is hereby created a uranium mill tailings remedial action oversight committee, referred to in this subsection (4) as the "oversight committee". The oversight committee shall consist of five members as set forth in paragraph (a.5) of this subsection (4). The department of public health and environment shall annually report on or before September 15 of each year to the oversight committee at a meeting called by the chairperson of the oversight committee on the progress of the cleanup of uranium mill tailing sites pursuant to the uranium mill tailings remedial action program, the proposed and final transfers or disposition of the land of any of the sites, the proposed program activities, any direct and indirect costs associated with the monitoring, notification, and handling of designated uranium mill tailings that are authorized in section 25-11-303, C.R.S., and financing requested for the next fiscal year. The oversight committee shall review such

report and obtain any additional information it needs in order to prepare a recommendation to the joint budget committee on the proposed funding amounts and sources for the next fiscal year. The recommendation shall be made within forty-five days of the oversight committee meeting at which the department of public health and environment presents its annual report.

(a.5) (I) Repealed.

(II) On and after July 1, 2007, the oversight committee shall consist of the executive director of the department of local affairs and one member appointed by the speaker of the house of representatives, by the minority leader of the house of representatives, by the president of the senate, and by the minority leader of the senate. All of the legislative members shall be from districts that include uranium mill tailing sites designated for cleanup under the federal "Uranium Mill Tailings Radiation Control Act of 1978", 42 U.S.C. sec. 7901 et seq., as amended. During odd-numbered years, the member appointed by the president of the senate shall be the chairperson of the oversight committee and the member appointed by the speaker of the house of representatives shall be the vice-chairperson of the oversight committee, and, during even-numbered years, the member appointed by the speaker of the house of representatives shall be the chairperson of the oversight committee and the member appointed by the president of the senate shall be the vice-chairperson of the oversight committee.

(b) The terms of the members appointed by the speaker of the house of representatives, the president of the senate, the minority leader of the house, and the minority leader of the senate and who are appointed pursuant to subparagraph (II) of paragraph (a.5) of this subsection (4) shall be extended to and expire on or shall terminate on the convening date of the first regular session of the sixty-seventh general assembly. As soon as practicable after such convening date, the speaker, the president, the minority leader of the house, and the minority leader of the senate shall appoint or reappoint members in the same manner as provided in paragraph (a.5) of this subsection (4). Thereafter, the terms of the members appointed or reappointed by the speaker, the president, the minority leader of the house, and the minority leader of the senate shall expire on the convening date of the first regular session of each general assembly, and all subsequent appointments and reappointments by the speaker, the president, the minority leader of the house, and the minority leader of the senate shall be made as soon as practicable after such convening date. The person making the original appointment or reappointment shall fill any vacancy by appointment for the remainder of an unexpired term. Oversight committee members appointed or reappointed by the speaker, the president, the minority leader of the house, and the minority leader of the senate shall serve at the pleasure of the appointing authority and shall continue in office until the member's successor is appointed.

(c) The legislative members of the oversight committee shall be reimbursed for necessary expenses in connection with the performance of their duties, including attendance at a meeting of the joint budget committee to present the oversight committee's recommendations, and shall be paid the same per diem as other members of interim committees in attendance at meetings.

(5) No new sites may be added to the uranium mill tailings remedial action program without the approval of the general assembly acting by bill.

(6) This section is repealed, effective July 1, 2017.

Source: L. 90: Entire section added, p. 1749, § 1, effective May 2. L. 93: (1) to (4) and (6) amended, p. 446, § 3, effective April 19. L. 94: (4) amended, p. 2805, § 578, effective July 1. L. 97: (2) amended, p. 336, § 1, effective April 16. L. 99: (6) amended, p. 204, § 1, effective March 31. L. 2002: (6) amended, p. 140, § 1, effective March 27. L. 2007: (4) amended, p. 191, § 29, effective March 22; (3)(d), (4), and (6) amended, p. 1367, § 2, effective May 29. L. 2011: (3)(a) and (3)(d) amended, (SB 11-238), ch. 300, p. 1446, § 4, effective June 8.

Editor's note: Subsection (4)(a.5)(I)(B) provided for the repeal of subsection (4)(a.5)(I), effective July 1, 2007. (See L. 2007, p. 1367.)

Enterprise Zones

ARTICLE 30

Urban and Rural Enterprise Zone Act

39-30-101.	Short title.	39-30-105.6.	Credit against tax - rehabilitation of vacant buildings.
39-30-102.	Legislative declaration.	39-30-106.	Sales and use tax - machinery and equipment exempted.
39-30-103.	Zones established - review - termination - repeal.	39-30-107.	Zoning regulations and labor agreements not affected.
39-30-103.2.	Enhanced rural enterprise zones - criteria - termination.	39-30-107.5.	Taxable property valuations - sales taxes - incentives - definitions.
39-30-103.5.	Credit against tax - contributions to enterprise zone administrators to implement economic development plans.	39-30-107.6.	Parallel credits and refunds - insurance premium taxes.
39-30-104.	Credit against tax - investment in certain property - repeal.	39-30-108.	Rules and regulations.
39-30-105.	Credit for new business facility employees - definitions.	39-30-109.	Repeal of article. (Repealed)
39-30-105.5.	Credit against Colorado income taxes based on expenditures for research and experimental activities.	39-30-110.	Electronic submissions.
		39-30-111.	Department of revenue - enterprise zone data - electronic filing - submission of carryforward schedule.
		39-30-112.	Data provided to department of revenue.

39-30-101. Short title. This article shall be known and may be cited as the "Urban and Rural Enterprise Zone Act".

Source: L. 86: Entire article added, p. 1139, § 1, effective July 1.

39-30-102. Legislative declaration. (1) The general assembly hereby finds and declares:

(a) That the health, safety, and welfare of the people of this state are dependent upon the continued encouragement, development, and expansion of opportunities for employment in the private sector in this state;

(b) That there currently exist in this state both rural and urban areas which require new employment opportunities to overcome conditions of unemployment, underemployment, net out-migration of the population, chronic economic distress, deterioration of main street business districts, or sudden and severe economic dislocations and that such conditions may well exist, from time to time, in other areas of the state; and

(c) That some rural counties in this state continue to have difficulty in promoting economic growth despite the existence of enterprise zones and their associated tax credits.

(2) It is, therefore, declared to be the policy of the state, in order to provide incentives for private enterprise to expand and for new businesses to locate in such economically depressed areas and to provide more job opportunities for residents of such areas, to establish a pilot program for tax incentives and other assistance for enterprises in designated areas to be known as enterprise zones.

(3) (a) It is the intent of the general assembly that state agencies, including but not limited to the division of local government in the department of local affairs, the department of labor and employment, the department of revenue, the state board for community colleges and occupational education in the department of higher education, and the Colorado office of economic development created in the office of the governor, place special emphasis on providing assistance to designated enterprise zones.

(b) It is further declared to be the intent of the general assembly that areas so designated also be eligible to apply for designation under federal enterprise zone legislation that may be enacted.

Source: **L. 86:** Entire article added, p. 1139, § 1, effective July 1. **L. 97:** (3)(a) amended, p. 527, § 11, effective July 1. **L. 2002:** (1)(c) added, p. 1103, § 1, effective August 7. **L. 2008:** (3)(a) amended, p. 216, § 1, effective March 26.

39-30-103. Zones established - review - termination - repeal. (1) Any municipality, county, or group of contiguous municipalities or counties may propose an area of such municipality, county, or group of municipalities or counties to be designated as an enterprise zone if the area has a population of no more than one hundred fifteen thousand persons as calculated pursuant to subsection (1.3) of this section, or one hundred fifty thousand persons as calculated pursuant to subsection (1.3) of this section if the area is a rural area, and meets at least one of the following additional criteria:

(a) An unemployment rate at least twenty-five percent above the state average for the most recent period of twelve consecutive months for which data is available from the United States census bureau or the department of local affairs;

(b) A population growth rate less than twenty-five percent of the state average rate for the most recent five-year period for which data are available from the United States census bureau or the department of local affairs, or, if such data is not available for any five-year period, for the most recent period of not less than five nor more than ten years for which such data is available; or

(c) A per capita income less than seventy-five percent of the state average for the most recent period for which data is available from the United States census bureau or the department of local affairs.

(1.3) For the purposes of this article, the population of an enterprise zone shall be calculated using data from the United States census bureau or the department of local affairs at the county, municipal, or block levels. Such calculations that require the use of block level data shall include the entire population of each block in which the enterprise zone is located.

(1.5) As used in this section, "rural area" means:

(a) A county with a population of less than fifty thousand people, according to the most recently available population statistics of the United States bureau of the census;

(b) A municipality with a population of less than fifty thousand people, according to the most recently available population statistics of the United States bureau of the census, that is located ten miles or more from a municipality with a population of more than fifty thousand people; or

(c) The unincorporated part of a county located ten miles or more from a municipality with a population of more than fifty thousand people, according to the most recently available population statistics of the United States bureau of the census.

(2) (a) Except as provided in paragraphs (b) and (c) of this subsection (2), the director of the Colorado office of economic development shall determine whether an area meets the criteria specified in subsection (1) of this section based on the most recent statistics available. Except as provided in paragraphs (b) and (c) of this subsection (2), all decisions concerning the designation or termination of an enterprise zone or any portion of an enterprise zone shall be made by the Colorado economic development commission created in section 24-46-102, C.R.S., upon the recommendations of the director of the Colorado office of economic development.

(b) (I) In order to review the effectiveness of the "Urban and Rural Enterprise Zone Act", there is hereby created an enterprise zone review task force, referred to in this paragraph (b) as the "task force".

(II) The task force consists of fifteen members as follows:

(A) The director of the office of economic development or the director's designee, which member shall serve as chair of the task force;

(B) Five zone administrators representing various parts of the state with various population densities, with at least one zone administrator representing an urban enterprise zone and at least one zone administrator representing a rural enterprise zone;

(C) Two economic development professionals;

(D) The director of the department of revenue or the director's designee;

(E) One person representing nonprofit organizations;

(F) Three business owners, one with fewer than fifty employees, one with fifty to one hundred and fifty employees, and one with more than one hundred fifty employees; and

(G) Two persons knowledgeable about the state's budget issues.

(III) The members of the task force shall be appointed by the office of economic development on or before July 1, 2012.

(IV) Members of the task force shall serve at the will of the person appointing the member.

(V) Members of the task force shall not be compensated for or reimbursed for their expenses incurred in attending meetings of the task force.

(VI) The task force shall meet as often as necessary and may adopt policies and procedures necessary to carry out its duties.

(VII) The task force shall review:

(A) The criteria for designation of an enterprise zone;

(B) The tax credits available in this article to assess their effectiveness in achieving the purposes of the enterprise zones and expanding economic development in such zones; and

(C) All other issues related to enterprise zones that the task force finds necessary.

(VIII) The task force shall report its progress, findings, and recommendations to the finance committees of the house of representatives and the senate, the house economic and business development committee, and the senate business, labor, and technology committee, or any successor committees, on or before November 1, 2013.

(IX) (A) This paragraph (b) is repealed, effective July 1, 2014.

(B) Prior to said repeal, the task force created pursuant to this section shall be reviewed as provided in section 2-3-1203, C.R.S.

(c) (I) Commencing January 1, 2016, the director of the Colorado office of economic development and the Colorado economic development commission shall review the enterprise zone designations no less frequently than once every five years to ensure that the existing zones continue to meet the criteria specified in subsection (1) of this section. The director and the commission may modify existing enterprise zone designations based on the review specified in this paragraph (c). If it is determined that existing enterprise zone designations need to be modified, such modification shall not be undertaken in a high unemployment period. Any modification shall be reported to the legislative audit committee in conjunction with the annual presentation described in paragraph (b.7) of subsection (4) of this section and shall also be reported to the finance committees of the house of representatives and the senate, or any successor committees.

(II) For purposes of this section, "high unemployment period" means a period in which the average of the seasonally adjusted U-3 unemployment rate, or successor index, for Colorado as determined by the United States secretary of labor, for the most recent three months for which data for Colorado is published, equals or exceeds eight percent.

(3) In proposing an area for designation as an enterprise zone, the local government shall submit to the director of the Colorado office of economic development a development plan. This plan shall include information describing the following items:

(a) The boundaries of the proposed zone;

(b) The proposed zone's potential for business development and job creation;

(c) How the proposed zone will support and be consistent with maintenance of an economically viable central business district;

(d) The specific economic development objectives, to be achieved in the zone, including specific objectives that have measurable outcomes, and the measures that local government and the private sector will undertake to support those objectives;

(e) The person or agency to be designated as administrator of the proposed zone;

(e.5) How the specific economic development objectives of the zone that have measurable outcomes will be measured and the specific, verifiable data that will be used to measure such outcomes;

(f) Any other pertinent information the director of the Colorado office of economic development or the Colorado economic development commission may require.

(4) (a) The Colorado economic development commission, after consultation with the executive directors of the department of labor and employment and the department of

revenue, may approve the designation of not more than sixteen areas as enterprise zones. The commission shall designate administrative entities for enterprise zones.

(b) The Colorado economic development commission shall work with the zone administrators of each enterprise zone to ensure that each zone has specific economic development objectives with outcomes that can be measured with specific, verifiable data. The director of the Colorado office of economic development shall require the zone administrators for each zone to submit annual documentation of efforts to improve conditions in areas designated as enterprise zones and the results of those efforts. Such annual documentation shall include specific, verifiable data that can be used to measure whether the zone has achieved the specific economic development objectives for the zone that have measurable outcomes. In order for the commission to determine if the enterprise zones or portions thereof are achieving the specific economic development objectives submitted pursuant to this paragraph (b) or to paragraph (d) of subsection (3) of this section, such annual documentation shall include, but need not be limited to, the most recent statistics available for companies claiming enterprise zone tax credits on:

(I) The number of jobs created in the enterprise zone and the North American industry classification system (NAICS) code of each company reporting the creation of jobs within the zone;

(II) The number of jobs retained in the zone;

(III) The average annual compensation level, including benefits, of the jobs created or retained within the zone, categorized by full time permanent, part time, temporary, and contract jobs;

(IV) (Deleted by amendment, L. 99, p. 725, § 2, effective May 20, 1999.)

(V) The number of employees from outside the zone transferred to a facility within the zone;

(VI) (Deleted by amendment, L. 99, p. 725, § 2, effective May 20, 1999.)

(VII) An analysis of capital investment in the enterprise zone, including:

(A) The number and amount of qualified rehabilitation expenses made on rehabilitated vacant buildings;

(B) The amount of investment in qualifying property for which tax credits were claimed pursuant to section 39-30-104;

(VIII) The number of employees trained and the amount of investment in job training programs pursuant to section 39-30-104 (4);

(IX) The number of employees employed in new or expanded business facilities for which a credit is claimed pursuant to section 39-30-105;

(X) The amount of investment tax credits claimed pursuant to section 39-30-104 and the amount of credits claimed for new business facility employees pursuant to section 39-30-105;

(XI) Any other information reasonably required by the zone administrator, the director of the Colorado office of economic development, or the Colorado economic development commission to evaluate the effectiveness of each zone in accomplishing the specific measurable objectives of the zone.

(b.5) In addition to the annual documentation required pursuant to paragraph (b) of this subsection (4), the director of the Colorado office of economic development shall require the zone administrators for each enterprise zone to submit, to the extent practicable, annual documentation on the most recent statistics available on:

(I) Any change in the unemployment rate in the zone;

(II) Any change in per capita income in the zone;

(III) Any change in population in the zone;

(IV) The amount of all monetary or in-kind contributions for the purpose of implementing the economic development plan for the zone and the specific purpose of the contributions as provided in section 39-30-103.5.

(b.7) The director of the Colorado office of economic development, or the director's designee, on behalf of the Colorado economic development commission, shall submit an annual report to the general assembly on or before November 1 of each year summarizing the annual documentation submitted by zone administrators to the director of the Colorado office of economic development each year pursuant to paragraphs (b) and (b.5) of this

subsection (4). The director of the Colorado office of economic development, or the director's designee, on behalf of the commission, shall make an annual presentation to the legislative audit committee that reviews and summarizes the information in the report submitted to the general assembly pursuant to this paragraph (b.7).

(c) (I) (Deleted by amendment, L. 2004, p. 364, § 1, effective August 4, 2004.)

(II) The state auditor shall submit a report to the governor and the general assembly, at the discretion of the state auditor and the legislative audit committee, evaluating the implementation of the enterprise zone program, making recommendations for statutory changes, if any, and including any other information requested by the governor or the general assembly. The evaluation shall be based upon the data included in the annual reports submitted by the director of the Colorado office of economic development on behalf of the Colorado economic development commission to the general assembly pursuant to paragraph (b.7) of this subsection (4) and objective verifiable data submitted by the enterprise zone administrators and maintained by the Colorado office of economic development, local governments, and enterprise zone administrators. The report shall also include information concerning the amounts of tax credits claimed and allowed under the program. For purposes of preparing the report required by this paragraph (c), the state auditor shall have access to all records and documents applicable to the program, whether maintained by the Colorado office of economic development, local governments, or enterprise zone administrators.

(c.5) Companies claiming enterprise zone credits shall provide information reasonably required by zone administrators, the director of the Colorado office of economic development, and the Colorado economic development commission to evaluate the effectiveness of each zone in accomplishing the measurable economic development objectives to be achieved in the zone. Such information shall be considered public records as defined in section 24-72-202 (6), C.R.S., shall be preserved for at least five years by the zone administrator who collected the information, who shall be the custodian of such information, and shall be made available by the zone administrator for inspection by any person at reasonable times. Nothing in this paragraph (c.5) shall be construed to require the disclosure to the public of any information that reveals the amount of compensation paid to any individual employee of a company, any Colorado income tax return, or any information regarding expenditures on research and development.

(d) Repealed.

(e) (Deleted by amendment, L. 2008, p. 216, § 2, effective March 26, 2008.)

(5) No later than March 1, 1997, the Colorado economic development commission created in section 24-46-102, C.R.S., shall report to the governor and the general assembly the results of a competitive benchmarking study, performed by a private consultant with experience in evaluation of state business assistance programs in multiple states, comparing Colorado's business climate, as it affects the retention and growth of basic employers and their investment, with the business climate of other states. In addition, the study shall assess long term economic development strategies, including but not limited to encouraging primary job creation throughout Colorado. Along with the report, the commission shall provide the governor and the general assembly its recommendations for additional study or modifications to Colorado's public policy concerning the state's business climate and its recommendations concerning specific business development and job creation objectives that should be used as minimum requirements or standards for future designation of enterprise zones or portions of enterprise zones consistent with statewide economic development targets and objectives.

(6) (a) When the termination of an enterprise zone or portion of an enterprise zone would prevent a taxpayer from qualifying for tax benefits under this article and the taxpayer can identify job creation or capital expansion activities that were planned prior to the termination announcement and that would have otherwise entitled the taxpayer to claim tax benefits under section 39-30-103.5, 39-30-104, or 39-30-105, the enterprise zone administrator and the taxpayer shall jointly certify detailed information about such planned activities. A taxpayer who files such certification with the taxpayer's state income tax return may claim tax benefits otherwise actually earned up to the limits of such certified information for a period not to exceed the ten tax years following the year in which the enterprise zone or portion of an enterprise zone was terminated. It is the intent of this

subsection (6) only to permit taxpayers to claim tax benefits on which they demonstrably relied in making business planning decisions, and, except as specifically provided in this subsection (6), nothing in this subsection (6) shall be construed to authorize the commission or any enterprise zone administrator to grant tax benefits that have been repealed by the general assembly or to grant tax benefits in excess of the limits established by law.

(b) Notwithstanding any date restriction set forth in its text, any certification that was prepared pursuant to paragraph (a) of this subsection (6) prior to June 3, 2002, that extends the right of a taxpayer to claim tax benefits for the maximum period that was allowed by law at the time the certification was prepared, and that allows the taxpayer to claim tax benefits for one or more income tax years that end on or after June 3, 2002, shall extend the right of the taxpayer to claim tax benefits for the maximum period specified in paragraph (a) of this subsection (6).

(7) (a) Beginning on January 1, 2012, before a taxpayer engages in any activity for which the taxpayer intends to claim an income tax credit pursuant to section 39-30-104, 39-30-105, 39-30-105.5, or 39-30-105.6, an authorized company official of the taxpayer's business or the taxpayer who is the owner of the business shall submit a pre-certification form to the enterprise zone administrator as specified in this subsection (7). A taxpayer that completes an activity prior to January 1, 2012, for which the taxpayer intends to claim an income tax credit pursuant to this article shall submit to the zone administrator on or before December 31, 2012, any information related to such completed activity that is necessary to receive certification from the zone administrator that the taxpayer's business is located in the enterprise zone. Nothing in this subsection (7) shall be construed to require a taxpayer to submit a pre-certification form to the zone administrator for activities completed prior to January 1, 2012. In connection with the pre-certification, the taxpayer shall be required to:

(I) Obtain verification from the enterprise zone administrator that the taxpayer's business is located in an enterprise zone;

(II) Certify that the taxpayer is aware of the enterprise zone income tax credits allowed pursuant to this article;

(III) Certify that the enterprise zone income tax credits allowed pursuant to this article are a contributing factor to the start-up, expansion, or relocation of the taxpayer's business in the enterprise zone; and

(IV) Certify that the taxpayer acknowledges that the pre-certification required pursuant to this section is for activities that shall commence after the date that the pre-certification form is executed by the enterprise zone administrator through the end of the business's then-current income tax year.

(b) The department of revenue shall amend the current certification forms that a taxpayer is required to complete in connection with claiming an income tax credit pursuant to this article, to include a section through which the taxpayer or an authorized company official of the taxpayer's business may provide the information required pursuant to subparagraphs (II) to (IV) of paragraph (a) of this subsection (7).

Source: L. 86: Entire article added, p. 1140, § 1, effective July 1. L. 87: (4) amended, p. 1470, § 1, effective May 28. L. 89: (3)(e) R&RE, (3)(f) added, and (4) amended, p. 1521, §§ 2-4, effective June 7. L. 90: (1)(b), (2), and (4) amended, p. 1752, § 1, effective May 24. L. 96: IP(1), (3)(d), and (4) amended, and (5) and (6) added, p. 1121, § 1, effective July 1. L. 97: (4)(b)(VIII) amended, p. 1397, § 3, effective June 3. L. 99: (3)(d), (4)(b), (4)(c), (4)(d)(I), and (6) amended and (3)(e.5), (4)(b.5), (4)(b.7), and (4)(c.5) added, p. 725, §§ 1, 2, effective May 20. L. 2000: (4)(e) amended, p. 1680, § 8, effective July 1. L. 2002: (4)(d) repealed and (6) amended, pp. 1121, 1122, §§ 5, 6, effective June 3; IP(1), (4)(c)(II), (4)(c.5), and (6) amended and (1.5) added, p. 1103, § 2, effective August 7. L. 2004: (4)(b.7) and (4)(c) amended, p. 364, § 1, effective August 4. L. 2008: (2), IP(3), (3)(f), (4)(a), IP(4)(b), (4)(b)(XI), IP(4)(b.5), (4)(b.7), (4)(c)(II), (4)(c.5), and (4)(e) amended, p. 216, § 2, effective March 26; (4)(c)(II) amended, p. 115, § 1, effective August 5. L. 2010: IP(1), (4)(b)(I), and (4)(c)(II) amended and (1.3) and (7) added, (SB 10-162), ch. 395, p. 1875, § 1, effective January 1, 2012. L. 2012: (1)(a), (1.3), (2), and IP(4)(b) amended, (HB 12-1241), ch. 262, p. 1356, § 1, effective June 6; (4)(b.7) amended, (SB 12-166), ch. 243, p. 1149, § 5, effective August 8.

Editor's note: (1) Amendments to subsection (6) by House Bill 02-1161 and House Bill 02-1399 were harmonized.

(2) Amendments to subsection (4)(c)(II) by Senate Bill 08-107 and House Bill 08-1305 were harmonized.

39-30-103.2. Enhanced rural enterprise zones - criteria - termination. (1) The portion of any county within an enterprise zone designated pursuant to section 39-30-103 shall be designated as an enhanced rural enterprise zone if the county that contains the area to be so designated meets two or more of the following criteria:

(a) The county has an unemployment rate at least fifty percent above the state average unemployment rate for the most recent period of twelve consecutive months for which data are available from the department of labor and employment;

(b) The county has a population growth rate less than twenty-five percent of the state average population growth rate for the most recent five-year period for which data are available from the United States census bureau or the department of local affairs, or if such data are not available for any five-year period, for the most recent period of not less than five nor more than ten years for which such data are available;

(c) The average per capita income in the county is less than seventy-five percent of the state average per capita income for the most recent period for which data are available from the United States census bureau or the department of local affairs;

(d) The total assessed value of all nonresidential property within the county ranks in the lower one-half of all counties based on the total value of nonresidential property for the most recent year for which such data are available from the department of local affairs;

(e) The county has a population of five thousand or less as estimated by the department of local affairs.

(2) By December 1, 2002, and every two years thereafter, the director of the Colorado office of economic development shall determine whether each county meets two or more of the criteria specified in subsection (1) of this section. Such determination shall be based on the most recent statistics available. The director of the Colorado office of economic development shall provide to each enterprise zone administrator and to the board of county commissioners of each eligible county a list of the counties that meet two or more of the criteria specified in subsection (1) of this section.

(3) If a county containing a previously designated enhanced rural enterprise zone does not appear on the biennial list of eligible counties provided by the director of the Colorado office of economic development, the enterprise zone within such county shall be terminated as an enhanced rural enterprise zone as of January 1 following the issuance of such list. If the county appears again on a subsequent list of eligible counties, the portion of the county within an enterprise zone shall be designated as an enhanced rural enterprise zone.

(4) The termination of an enhanced rural enterprise zone shall not restrict, curtail, terminate, or otherwise cut off any tax credits that were earned by any taxpayer based on transactions completed while a county was designated as an enhanced rural enterprise zone. In addition, the director of the Colorado office of economic development shall establish procedures for recognizing and allowing credits to taxpayers who have taken actions in reliance on agreements reached with enhanced rural enterprise zone administrators or local governments for long-term investments.

(5) If the termination of an enhanced rural enterprise zone would prevent a taxpayer from qualifying for tax benefits under this article and the taxpayer can identify job creation or capital expansion activities that were planned before the director of the Colorado office of economic development issued the list of eligible counties and that would have otherwise entitled the taxpayer to claim tax benefits under section 39-30-105, the enterprise zone administrator and the taxpayer shall jointly certify detailed information about such planned activities. A taxpayer who files such certification with the taxpayer's state income tax return may claim tax benefits otherwise actually earned up to the limits of such certified information for a period not to exceed the five tax years following the year in which the enhanced rural enterprise zone was terminated. It is the intent of this subsection (5) to permit taxpayers to claim only those tax benefits on which they demonstrably relied in making business planning decisions, and, except as specifically provided in this subsection

(5), nothing in this subsection (5) shall be construed to authorize any enterprise zone administrator to grant tax benefits that have been repealed by law or to grant tax benefits in excess of the limits established by law.

Source: L. 2002: Entire section added, p. 1105, § 3, effective August 7. **L. 2008:** (2), (3), (4), and (5) amended, p. 219, § 3, effective March 26.

39-30-103.5. Credit against tax - contributions to enterprise zone administrators to implement economic development plans. (1) (a) (I) Except as otherwise provided in subparagraph (II) of this paragraph (a), for income tax years commencing on or after January 1, 1989, any taxpayer who makes a monetary or in-kind contribution for the purpose of implementing the economic development plan for the enterprise zone to the person or agency designated as the enterprise zone administrator by the department of local affairs, and on or after July 1, 2008, by the person or agency designated as the enterprise zone administrator by the Colorado economic development commission, shall be allowed a credit against the income tax imposed by article 22 of this title in an amount equal to fifty percent of the total value of the contribution as certified by the enterprise zone administrator.

(II) For income tax years commencing on or after January 1, 1996, the amount of the credit allowed for contributions made pursuant to this paragraph (a) shall be twenty-five percent of the total value of the contribution as certified by the enterprise zone administrator; except that nothing in this subparagraph (II) shall be construed to affect the amount of the credit:

(A) For contributions made prior to July 1, 1997: To an enterprise zone administrator for a project, program, or organization that was originally approved by an enterprise zone administrator in writing prior to May 1, 1996; or directly to a project, program, or organization that was originally approved by an enterprise zone administrator prior to May 1, 1996, and that is certified by the enterprise zone administrator pursuant to subsection (5) of this section; or

(B) For contributions made on or after July 1, 1997, through December 31, 2000, pursuant to a written agreement executed prior to July 1, 1997, between a taxpayer and an enterprise zone administrator in which the taxpayer pledges to make future contributions to a project, program, or organization that was approved by the enterprise zone administrator pursuant to this section prior to May 1, 1996.

(b) The credit allowed by paragraph (a) of this subsection (1) shall not exceed one hundred thousand dollars or the total amount of the income tax imposed on the taxpayer's income by article 22 of this title for the tax year for which the credit is claimed, whichever is less. In-kind contributions shall not exceed fifty percent of the total credit claimed.

(c) Upon request, the enterprise zone administrator, acting on behalf of the department of revenue, shall provide the taxpayer with a form to be filed with the department of revenue for the purpose of claiming the credit allowed by this section which shall be accompanied by a copy of the certification of the value and purpose of the contribution furnished to the taxpayer by the enterprise zone administrator.

(d) If the amount of the credit allowed pursuant to the provisions of this section exceeds the amount of income taxes otherwise due on the income of the taxpayer in the income tax year for which the credit is being claimed, the amount of the credit not used as an offset against income taxes in said income tax year may be carried forward as a credit against subsequent years' income tax liability for a period not exceeding five years and shall be applied first to the earliest income tax years possible. Any credit remaining after said period shall not be refunded or credited to the taxpayer.

(e) On or before November 1, 2000, and November 1 of each year thereafter, each zone administrator shall provide to the director of the Colorado office of economic development on behalf of the Colorado economic development commission a list of all programs, projects, and organizations to which taxpayers may contribute during the next calendar year for the purpose of implementing the economic development plan of the zone and receiving a tax credit pursuant to this section. The list shall be accompanied by a description of each program, project, or organization, including the purpose and relationship of the program,

project, or organization to the economic development goals of the enterprise zone, the expected benefits of the program, project, or organization to the enterprise zone, and an estimate of the amount of potential contributions to the program, project, or organization during the next calendar year. Any modifications to a list, including programs, projects, or organizations that are to be added thereto, shall be submitted to the director of the office of economic development on behalf of the commission by the zone administrator no later than thirty days after the modification is made. Commencing July 1, 1999, the commission is authorized to hold hearings and review any new program, project, or organization included on a list that is submitted to the director of the Colorado office of economic development on behalf of the commission pursuant to this section, any modification to a list, and any other program, project, or organization that the commission determines has changed materially. A list or modification of a list that is submitted to the director of the Colorado office of economic development on behalf of the commission pursuant to this section shall not be considered final until thirty days after the commission has received such information. The commission shall approve any program, project, or organization that it determines is eligible under the requirements of this section or is essential to the mission of the enterprise zone upon a majority vote of the members of the commission present at a meeting at which such approval is considered. The director of the Colorado office of economic development on behalf of the commission shall notify the zone administrator of any program, project, or organization that is not approved within thirty days of receipt of the list or modification of the list. Any program, project, or organization not approved by the commission may request that the commission reconsider its decision within thirty days after the date the notice indicating that the program, project, or organization was not approved was provided to the zone administrator. A zone administrator may accept contributions for any program, project, or organization it has submitted pursuant to this paragraph (e).

(2) (a) For income tax years commencing prior to January 1, 1999, monetary or in-kind contributions to promote child care in enterprise zones shall be deemed to be for the purpose of implementing the economic development plan for the enterprise zone and shall include but shall not be limited to the following types of contributions:

(I) Donating money, real estate, or property to the enterprise zone for the establishment of a child care facility;

(II) Donating money to the enterprise zone to establish a grant or loan program for a parent or parents requiring financial assistance for child care;

(III) Pooling moneys of several businesses and donating such moneys to the enterprise zone for the establishment of a child care facility;

(IV) Donating money to the enterprise zone for the training of child care providers; and

(V) Donating money, services, or equipment to the enterprise zone for the establishment of an information dissemination program to provide information and referral services to assist a parent or parents in obtaining child care.

(b) Notwithstanding any other provision to the contrary, nothing in this subsection (2) shall be construed to limit the ability of a taxpayer to claim a credit under this subsection (2) for contributions made on or after January 1, 1999, pursuant to the terms of an agreement entered into prior to such date between the taxpayer and an enterprise zone administrator.

(3) (a) Monetary or in-kind contributions to promote temporary, emergency, or transitional housing programs for the homeless that offer or provide referrals to child care, job placement, and counseling services for the purpose of promoting employment for homeless persons in enterprise zones shall be deemed to be for the purpose of implementing the economic development plan for the enterprise zone and shall include but not be limited to the following types of contributions:

(I) Donating money, real estate, or property to the enterprise zone for the establishment of temporary, emergency, or transitional housing for the homeless to include child care and job placement services;

(II) Donating money to the enterprise zone to establish a grant or loan program for homeless individuals requiring financial assistance for temporary, emergency, or transitional housing or child care;

(III) Pooling moneys of several businesses and donating those moneys to the enterprise zone for the establishment of temporary, emergency, or transitional housing programs for the homeless that offer or provide referrals to child care, job placement, and counseling services for the purpose of promoting employment for homeless persons;

(IV) Donating money to the enterprise zone for the training of homeless individuals to obtain employment; and

(V) Donating money, services, or equipment to the enterprise zone for the establishment of an information dissemination program to provide information and referral services to assist a homeless individual in obtaining temporary, emergency, or transitional housing, child care, or employment.

(b) Repealed.

(3.5) For income tax years commencing on and after January 1, 2003, monetary or in-kind contributions to promote nonprofit or government-funded community development projects in enterprise zones shall be deemed to be for the purpose of implementing the economic development plan for the enterprise zone.

(4) In no event shall credits be allowed pursuant to this section for contributions that directly benefit the contributor or that are not directly related to job creation, job preservation, or other purposes specified in subsections (2), (3), and (3.5) of this section.

(5) (a) Contributions pursuant to this section may be made directly to programs, projects, or organizations certified by the enterprise zone administrator. The enterprise zone administrator shall only certify programs, projects, or organizations that meet the criteria set forth in this section for the purpose of receiving direct contributions.

(b) Each program, project, and organization certified by the enterprise zone administrator pursuant to this subsection (5) shall submit a report at least once per year, or more often if required by the enterprise zone administrator, indicating the total value of contributions received for which tax credits would be allowed pursuant to this section and the source of the contribution.

(6) No later than ninety days after making a certification of value pursuant to subsection (1) of this section, the enterprise zone administrator making the certification shall report to the director of the Colorado office of economic development on behalf of the Colorado economic development commission the total value of the contribution as certified by the administrator, the source of the contribution, the purpose of the contribution, and the relationship of the stated purpose of the contribution to the enterprise zone's goals or job creation objectives.

(7) The director of the Colorado office of economic development on behalf of the Colorado economic development commission or the enterprise zone administrator may release information concerning the source and amount of contributions made pursuant to this section, as well as the amount of the credits allowed pursuant to this section.

(8) (a) Any enterprise zone administrator that provides oversight, management, or other administrative services to a program, project, or organization that has been approved by the economic development commission for purposes of the contribution tax credit as defined in this section is authorized to charge reasonable fees to programs, projects, and organizations as defined in this section. Each enterprise zone administrator that charges administrative fees pursuant to this paragraph (a) shall establish a reasonable policy regarding the imposition of such fees and shall submit the policy to the Colorado economic development commission for review and approval.

(b) The Colorado economic development commission shall review the administrative fee policy established by an enterprise zone administrator and shall approve the policy or require that the enterprise zone administrator make modifications to the policy as specified by the commission before approving the policy.

Source: L. 89: Entire section added, p. 1519, § 1, effective June 7. L. 90: (2) added, p. 1399, § 14, effective May 24. L. 94: (3) added, p. 2085, § 1, effective July 1. L. 96: (1)(a) and (1)(c) amended and (1)(e), (4), (5), (6), and (7) added, p. 1125, §§ 2, 3, effective July 1. L. 98: (3)(b) repealed, p. 225, § 1, effective April 10; (2) amended, p. 1371, § 2, effective August 5. L. 99: (1)(e) amended, p. 729, § 3, effective May 20. L. 2000: (1)(a)(I), (1)(e), (6), and (7) amended, p. 1680, § 9, effective July 1. L. 2002: (3.5) added

and (4) amended, p. 1107, § 4, effective August 7. **L. 2006:** (2) amended, p. 1508, § 60, effective June 1. **L. 2007:** (1)(a)(I) amended, p. 343, § 1, effective August 3. **L. 2008:** (1)(a)(I), (1)(e), (6), and (7) amended, p. 220, § 4, effective March 26. **L. 2010:** (8) added, (SB 10-162), ch. 395, p. 1877, § 2, effective January 1, 2012.

39-30-104. Credit against tax - investment in certain property - repeal. (1) (a) In lieu of any credit allowable under section 39-22-507.5, there shall be allowed to any person as a credit against the tax imposed by article 22 of this title, for income tax years commencing on or after January 1, 1986, an amount equal to the total of three percent of the total qualified investment, as determined under section 46 (c) (2) of the federal "Internal Revenue Code of 1986", as amended, in such taxable year in qualified property as defined in section 48 of the internal revenue code to the extent that such investment is in property that is used solely and exclusively in an enterprise zone for at least one year. The references in this subsection (1) to sections 46 (c) (2) and 48 of the internal revenue code mean sections 46 (c) (2) and 48 of the internal revenue code as they existed immediately prior to the enactment of the federal "Revenue Reconciliation Act of 1990".

(b) (I) Except as provided in subparagraph (IV) of this paragraph (b), for income tax years commencing on or after January 1, 2011, and for each income tax year thereafter, a commercial truck, truck tractor, tractor, or semitrailer with a gross vehicle weight rating of fifty-four thousand pounds or greater that is model year 2010 or newer and is designated as Class A personal property as specified in section 42-3-106 (2) (a), C.R.S., as well as any parts associated with the vehicle at the time of purchase, shall be deemed to be used solely and exclusively in an enterprise zone if it is licensed and registered within the state and predominantly housed and based at the taxpayer's business trucking facility within an enterprise zone for the twelve-month period following its purchase.

(II) The income tax credit for a qualified investment in a commercial truck, truck tractor, tractor, or semitrailer with a gross vehicle weight rating of fifty-four thousand pounds or greater that is model year 2010 or newer and is designated as Class A personal property as specified in section 42-3-106 (2) (a), C.R.S., as well as any parts associated with the vehicle at the time of purchase, shall be allowed in an amount equal to one and one-half of one percent of the total qualified investment if the model year of the commercial truck, truck tractor, tractor, or semitrailer was sold as new during such income tax year;

(III) For purposes of this paragraph (b), "facility" means any factory, mill, plant, refinery, warehouse, feedlot, building, or complex of buildings located within the state, including the land on which such facility is located and all machinery, equipment, and other real and tangible personal property located at or within such facility and used in connection with the operation of such facility, which facility the taxpayer owns, rents, or leases in the business's name at which continuous and ongoing operational activities of the business are maintained and at which at least one full-time employee of the business is employed.

(IV) To qualify for the tax credit granted under this paragraph (b), a claimant shall be certified by the Colorado economic development commission created in section 24-46-102, C.R.S.

(V) The Colorado economic development commission shall certify people eligible for the income tax credit granted in this paragraph (b) but shall not certify the income tax credit granted in this paragraph (b) if the certification results in more credits being claimed than are allocated pursuant to section 42-1-225, C.R.S.

(VI) To implement this section, the Colorado economic development commission shall track the amount of the credits authorized and, by January 30 of each year, transmit to the state treasurer a statement of the amount of tax credits certified pursuant to this paragraph (b) for the previous year.

(VII) No later than September 1, 2012, and no later than September 1 of each year thereafter through September 1, 2014, the Colorado economic development commission shall provide the department of revenue with an electronic report of the taxpayers receiving a credit allowed in this paragraph (b) for the preceding calendar year or any fiscal year ending in the preceding calendar year and any credits disallowed pursuant to subparagraph (V) of this paragraph (b). The report shall contain the following information:

(A) The taxpayer's name;

(B) The taxpayer's Colorado account number and federal employer identification number;

(C) The amount of the credit allowed in this section; and

(D) Any associated taxpayers' names, Colorado account numbers, and federal employer identification numbers or social security numbers, if the credit allowed in this section is allocated from a pass-through entity.

(2) (a) The amount of the credit set forth in subsection (1) of this section shall be subject to the limitations of section 39-22-507.5; except that, in computing the limitations on credit pursuant to section 39-22-507.5 (3), a taxpayer's actual tax liability for the income tax year shall not be reduced by the amount of credits allowed by section 39-30-105 and the limit on that portion of a taxpayer's tax liability that exceeds five thousand dollars shall be fifty percent.

(b) In addition to the limitations set forth in paragraph (a) of this subsection (2), for income tax years commencing on or after January 1, 2011, but prior to January 1, 2014, any taxpayer that is eligible to claim a credit pursuant to subsection (1) of this section in excess of five hundred thousand dollars shall defer claiming any amount of the credit allowed pursuant to this section that exceeds five hundred thousand dollars until an income tax year commencing on or after January 1, 2014. The five hundred thousand dollar limitation specified in this paragraph (b) shall apply to any credit allowed in the current year including any amount carried forward from a prior year.

(2.5) (a) Notwithstanding the provisions of section 39-22-507.5 (7) (b), and except as otherwise provided in paragraph (b) of this subsection (2.5), any excess credit claimed pursuant to this section shall be an investment tax credit carryover to each of the twelve income tax years following the unused credit year.

(b) A taxpayer that deferred claiming any credit in excess of five hundred thousand dollars during an income tax year commencing on or after January 1, 2011, but prior to January 1, 2014, pursuant to paragraph (b) of subsection (2) of this section shall be allowed to claim the deferred credit as an investment tax credit carryover for twelve income tax years following the year the credit was originally allowed plus one additional income tax year for each income tax year that the credit was deferred pursuant to paragraph (b) of subsection (2) of this section.

(3) (Deleted by amendment, L. 96, p. 1127, § 4, effective July 1, 1996.)

(4) (a) In addition to any other credit allowed under this section, for income tax years commencing on or after January 1, 1997, there shall be allowed to any person as a credit against the tax imposed by article 22 of this title an amount equal to ten percent of the total investment made during the taxable year in a qualified job training program.

(b) For purposes of this subsection (4):

(I) "Qualified job training program" means a structured training or basic education program conducted on-site or off-site by the taxpayer or another entity to improve the job skills of employees employed by the taxpayer working predominantly within an enterprise zone.

(II) "Total investment" means:

(A) Land, building, real property improvement, leasehold improvement, or space lease costs and the costs of any capital equipment purchased or leased by the taxpayer and used entirely within an enterprise zone primarily for qualified job training program purposes or to make a training site accessible, when such costs are not the subject of a credit under subsection (1) of this section; and

(B) Expenses of a qualified job training program, whether incurred within or outside of an enterprise zone, including expensed equipment, supplies, training staff wages or fees, training contract costs, temporary space rental, travel expenses, and other expense costs of qualified job training programs for employees working predominantly within an enterprise zone.

(5) Repealed.

(6) For credits claimed for income tax years commencing on or after January 1, 1997, no credit shall be allowed pursuant to this section if the investment resulted from the relocation of a business operation from within the state to an enterprise zone, regardless of

whether the original location of the operation was within an enterprise zone, except to the extent such relocation meets the criteria for an expansion pursuant to section 39-30-105 (7) (c) (II) and (7) (c) (III).

Source: **L. 86:** Entire article added, p. 1141, § 1, effective July 1. **L. 87:** (3) added, p. 1470, § 2, effective May 28. **L. 91:** (3) amended, p. 1988, § 7, effective April 20. **L. 92:** (2) amended, p. 2220, § 3, effective May 29. **L. 96:** Entire section amended, p. 1127, § 4, effective July 1. **L. 97:** (5) repealed, p. 1396, § 2, effective June 3. **L. 2007:** (6) amended, p. 352, § 9, effective August 3. **L. 2009:** (1) amended, (HB 09-1298), ch. 417, p. 2313, § 2, effective July 1, 2010. **L. 2010:** (2) and (2.5) amended, (HB 10-1200), ch. 321, p. 1495, § 1, effective May 27; (1)(b)(I), (1)(b)(II), and (1)(b)(IV) amended and (1)(b)(V), (1)(b)(VI), and (1)(b)(VII) added, (HB 10-1285), ch. 423, p. 2191, § 6, effective July 1.

Editor's note: Section 7 of chapter 417, Session Laws of Colorado 2009, provides that this section shall not take effect unless the revisor of statutes receives written notice from the executive director of the department of revenue that a sustainable source of revenue has been identified to implement this section; however, section 8 of chapter 423, Session Laws of Colorado 2010, amended section 7 of chapter 417, Session Laws of Colorado 2009, by eliminating the notification requirement. Chapter 417, Session Laws of Colorado 2009, became effective July 1, 2010.

39-30-105. Credit for new business facility employees - definitions. (1) (a) (I) For any income tax year commencing on or after January 1, 1993, any taxpayer who establishes a new business facility in an enterprise zone shall be allowed a credit against the income tax imposed by article 22 of this title in an amount equal to five hundred dollars per income tax year for each new business facility employee, pursuant to subsection (6) of this section, who is working within the zone, prorated according to the number of months the employee was employed by the taxpayer during the income tax year. An employee whose primary duties consist of operating a commercial motor vehicle with a commercial driver's license shall be deemed to be working one hundred percent within the zone if the employee spends no more than five percent of his or her total time at any facility of the employer other than the facility within the zone.

(II) (Deleted by amendment, L. 2002, p. 1107, § 5, effective August 7, 2002.)

(III) For any income tax year commencing on or after January 1, 2003, any taxpayer who establishes a new business facility in an enhanced rural enterprise zone shall be allowed an additional credit against the income tax imposed by article 22 of this title in an amount equal to two thousand dollars per income tax year for each new business facility employee who is working within the enhanced rural enterprise zone, prorated according to the number of months such employee was employed by the taxpayer during the income tax year.

(IV) A new business facility qualifying for credit shall be allowed the credit for each subsequent tax year for each additional new business facility employee in excess of the maximum number employed in any prior tax year. Any credit shall be allowed for a maximum of twelve consecutive months for each new business facility employee employed by the taxpayer.

(b) In addition to the credit available under paragraph (a) of this subsection (1), a taxpayer qualified under said paragraph (a) shall be allowed for the first two full income tax years while located in an enterprise zone a credit in an amount equal to two hundred dollars for each new business facility employee who is insured under a health insurance plan or program provided through his or her employer. To be eligible for such credit, the employer must contribute fifty percent or more of the total cost of a health insurance plan or program, and such plan or program must be in accordance with the provisions of article 8 of title 10 or part 1, 2, 3, or 4 of article 16 of title 10, C.R.S., or be a self-insurance program and include partial or complete coverage for hospital and physician services.

(2) For new business facilities in enterprise zones or enhanced rural enterprise zones, the number of new business facility employees engaged or maintained in employment at the new business facility for each taxable year for which the credit is claimed must equal or exceed one person.

(3) (a) Any taxpayer who operates a business within an enterprise zone that adds value through manufacturing or processing to agricultural commodities shall be allowed in addition to the credit allowed under subsection (1) of this section, while located in the enterprise zone, a credit against the income tax imposed by article 22 of this title in an amount equal to five hundred dollars for each additional new business facility employee in excess of the maximum number employed in any prior tax year.

(b) For any income tax year commencing on or after January 1, 2003, any taxpayer who operates a business within an enhanced rural enterprise zone that adds value through manufacturing or processing to agricultural commodities shall be allowed in addition to the credit allowed under paragraph (a) of this subsection (3) a credit against the income tax imposed by article 22 of this title in an amount equal to five hundred dollars for each additional new business facility employee in excess of the maximum number employed in any prior tax year.

(4) Repealed.

(5) (a) (I) For taxable years beginning on or after January 1, 1993, if the total amount of the credits claimed by a taxpayer pursuant to the provisions of subparagraph (I) of paragraph (a) of subsection (1), paragraph (b) of subsection (1), and paragraph (a) of subsection (3) of this section exceeds the amount of income taxes due on the income of the taxpayer in the income tax year for which the credits are being claimed, the amount of the credits not used as an offset against income taxes in said income tax year shall not be allowed as a refund but may be carried forward as a credit against subsequent years' tax liability for a period not exceeding five years and shall be applied first to the earliest income tax years possible. Any amount of the credit that is not used during said period shall not be refundable to the taxpayer.

(II) For taxable years beginning on or after January 1, 2003, if the total amount of credits claimed by a taxpayer pursuant to subparagraph (III) of paragraph (a) of subsection (1) of this section and paragraph (b) of subsection (3) of this section exceeds the amount of income taxes due on the income of the taxpayer in the income tax year for which the credits are being claimed, the amount of credits not used as an offset against income taxes in said income tax year shall not be allowed as a refund but may be carried forward as a credit against subsequent years' tax liability for a period not exceeding seven years and shall be applied first to the earliest income tax years possible. Any amount of the credit which is not used during said period shall not be refundable to the taxpayer.

(b) (I) Subparagraph (I) of paragraph (a) of this subsection (5) is effective for income tax years commencing on or after January 1, 1993; except that application of subparagraph (I) of paragraph (a) of this subsection (5) to the credit described in paragraph (b) of subsection (1) of this section shall be effective for income tax years commencing on or after January 1, 1996.

(II) Subparagraph (II) of paragraph (a) of this subsection (5) is effective for income tax years commencing on or after January 1, 2003.

(c) For purposes of this section, a partnership, S corporation, limited liability company, or other entity electing not to be taxed as a corporation may pass through the credits earned under this section in any tax year to its participating partners, shareholders, or members, hereinafter referred to as the "investors" of the entity, in any percentage the entity chooses, up to the amount of the credit earned in the tax year. Credits earned but unclaimed in a tax year for which the entity elects to be taxed as a corporation may not be distributed to investors in a later tax year for which the entity elects not to be taxed as a corporation. In any tax year for which the entity elects not to be taxed as a corporation, all credits passed through to investors may be carried forward at the investor level for the carryover periods specified in this section.

(d) For purposes of this section, a taxpayer may only claim the new business' facility employee credit for employees for whom:

(I) The taxpayer withholds social security, medicare, and income taxes under the taxpayer's own federal and state taxpayer identification numbers; or

(II) The taxpayer is the work-site employer, as defined in section 8-70-114 (2) (a) (VII), C.R.S., and an employee leasing company, as defined in section 8-70-114 (2) (a) (V), C.R.S., as the employing unit for, or co-employer with, the taxpayer, withholds social

security, medicare, and income taxes under the employee leasing company's own federal and state taxpayer identification numbers.

(6) The number of new business facility employees during any taxable year shall be determined by dividing by twelve the sum of the number of new business facility employees on the last business day of each month of such taxable year. If the new business facility is in operation for less than the entire taxable year, the number of new business facility employees shall be determined by dividing the sum of the number of new business facility employees on the last business day of each full calendar month during the portion of the taxable year during which the new business facility was in operation by the number of full calendar months during the period.

(b) Notwithstanding the provisions of paragraph (a) of this subsection (6), for the purpose of determining the credit allowed by this section in the case of a facility that qualifies as a new business facility but is a replacement business facility, the number of new business facility employees employed in the operation of the facility shall be reduced by the average number, determined pursuant to paragraph (a) of this subsection (6), of individuals employed in the operation of the facility that the new business facility replaces during the three taxable years preceding the taxable year in which commencement of commercial operations occurs at the new business facility.

(7) As used in this section, unless the context otherwise requires:

(a) "Building" means only structures within which individuals are customarily employed or that are customarily used to house machinery, equipment, or other property.

(b) "Commencement of commercial operations" means the first taxable year that the new business facility is first available for use by the taxpayer, or first capable of being used by the taxpayer, in the revenue-producing enterprise in which the taxpayer intends to use the new business facility.

(c) (I) "Facility" means any factory, mill, plant, refinery, warehouse, feedlot, building, or complex of buildings located within the state, including the land on which the facility is located and all machinery, equipment, and other real and tangible personal property located at or within the facility and used in connection with the operation of the facility.

(II) (A) If a facility that does not constitute a new business facility is expanded by the taxpayer, the expansion shall be considered a separate facility eligible for the credit allowed by this section if: The taxpayer's investment in the expansion exceeds one million dollars or the investment is less than one million dollars but the investment in the expansion exceeds one hundred percent of the investment in the original facility prior to expansion; and the expansion otherwise constitutes a new business facility.

(B) The taxpayer's investment in the expansion and in the original facility prior to expansion shall be determined in the manner provided in paragraph (g) of this subsection (7).

(III) If a facility that does not constitute a new business facility is expanded by the taxpayer, the expansion shall be considered a separate facility for purposes of the credit allowed by this section if:

(A) The expansion results in the employment of ten or more new business facility employees or, for income tax years commencing on or after January 1, 1996, a ten percent increase in the number of new business facility employees resulting in the employment of at least one full-time new business facility employee, whichever is less, during the taxable year over and above the average number of employees employed in the enterprise zone by the taxpayer during the twelve months immediately prior to the expansion, determined pursuant to subsection (6) of this section; and

(B) The expansion otherwise constitutes a new business facility.

(d) "Net annual rental rate" means the annual rental rate paid by the taxpayer on real and tangible personal property, less any annual rental rate received by the taxpayer from subrentals.

(e) "New business facility" means a facility that satisfies the following requirements:

(I) The facility is operated by the taxpayer in the operation of a revenue-producing enterprise. A facility shall not be considered a new business facility in the hands of the taxpayer if the taxpayer's only activity with respect to the facility is to lease it to another person. If the taxpayer operates only a portion of the facility in the operation of a

revenue-producing enterprise and leases another portion of the facility to another person or does not otherwise use the other portions in the operation of a revenue-producing enterprise, the portion operated by the taxpayer in the operation of a revenue-producing enterprise shall be considered a new business facility if the requirements of subparagraphs (II) and (III) of this paragraph (e) are satisfied.

(II) If the facility was acquired by the taxpayer from another person, the facility was not operated immediately prior to the transfer of title to the facility to the taxpayer or immediately prior to the commencement of the term of the lease of the facility to the taxpayer by any other person in the operation of a revenue-producing enterprise, and the taxpayer continues the operation of the same or a substantially identical revenue-producing enterprise at the facility.

(III) The facility is not a replacement business facility.

(f) "New business facility employee" means a person employed by the taxpayer in the operation of a new business facility during the taxable year for which the credit allowed by this section is claimed. A person shall be deemed an employee if the person performs duties in connection with the operation of the new business facility on:

(I) A regular, full-time basis;

(II) A part-time basis if the person is customarily performing his or her duties at least twenty hours per week throughout the taxable year; or

(III) A seasonal basis if the person performs his or her duties for substantially all of the season customary for the position in which the person is employed.

(g) "New business facility investment" means the value of the real and tangible personal property, except inventory or property held for sale to customers in the ordinary course of the taxpayer's business, that constitutes the new business facility or that is used by the taxpayer in the operation of the new business facility during the taxable year for which the credit allowed by this section is claimed. The value of the property during the taxable year shall be:

(I) The original cost of the real and tangible personal property if owned by the taxpayer; or

(II) Eight times the net annual rental rate of the real and tangible personal property if leased by the taxpayer.

(h) (I) "Related taxpayer" means:

(A) A corporation, partnership, limited liability company, trust, or association controlled by the taxpayer;

(B) An individual, corporation, limited liability company, partnership, trust, or association under the control of the taxpayer; or

(C) A corporation, limited liability company, partnership, trust, or association controlled by an individual, corporation, limited liability company, partnership, trust, or association under the control of the taxpayer.

(II) For the purposes of this paragraph (h), unless the context otherwise requires:

(A) "Control of a corporation" means ownership, directly or indirectly, of stock possessing at least eighty percent of the total combined voting power of all classes of stock entitled to vote and at least eighty percent of all other classes of stock of the corporation.

(B) "Control of a partnership, limited liability company, or association" means ownership of at least eighty percent of the capital or profits interest in the partnership, limited liability company, or association.

(C) "Control of a trust" means ownership, directly or indirectly, of at least eighty percent of the beneficial interest in the principal or income of the trust.

(i) (I) "Replacement business facility" means a facility, otherwise described in paragraph (e) of this subsection (7) and referred to in this paragraph (i) as a "new facility", which replaces another facility, referred to in this paragraph (i) as an "old facility", located within the state that the taxpayer or a related taxpayer previously operated but discontinued operating on or before the close of the first taxable year in which the credit allowed by this section is claimed. A new facility shall be deemed to replace an old facility if the following conditions are met:

(A) The old facility was operated by the taxpayer or a related taxpayer for more than three full taxable years out of the five taxable years next preceding the taxable year in which commencement of commercial operations occurs at the new facility; and

(B) The old facility was operated by the taxpayer or a related taxpayer in the operation of a revenue-producing enterprise and the taxpayer continues the operation of the same or a substantially identical revenue-producing enterprise at the new facility.

(II) Notwithstanding the provisions of subparagraph (I) of this paragraph (i), a facility shall not be considered a replacement business facility if the taxpayer's investment in the new facility exceeds three million dollars or the investment is less than three million dollars but the investment in the new facility exceeds three hundred percent of the investment in the old facility by the taxpayer or related taxpayer. The investment in the new facility and in the old facility shall be determined in the manner provided in paragraph (g) of this subsection (7).

(j) "Revenue-producing enterprise" means an enterprise that engages in the following:

(I) The production, assembly, fabrication, manufacturing, or processing of any agricultural, mineral, or manufactured product;

(II) The storage, warehousing, distribution, or sale of any products of agriculture, mining, or manufacturing;

(III) The feeding of livestock at a feedlot;

(IV) The operation of laboratories or other facilities for scientific, agricultural, animal husbandry, or industrial research, development, or testing;

(V) The performance of services of any type;

(VI) The administrative management of any of the activities listed in subparagraphs (I) to (V) of this paragraph (j); or

(VII) Any combination of any of the activities referred to in subparagraphs (I) to (VI) of this paragraph (j).

(k) "Same or a substantially identical revenue-producing enterprise" means a revenue-producing enterprise in which the products produced or sold, services performed, or activities conducted are the same in character and use and are produced, sold, performed, or conducted in the same manner and to or for the same types of customers as the products, services, or activities produced, sold, performed, or conducted in another revenue-producing enterprise.

Source: **L. 86:** Entire article added, p. 1141, § 1, effective July 1. **L. 87:** (1) and (2) amended and (4) added, p. 1473, § 1, effective May 25; (1) amended and (3) added, p. 1471, § 3, effective May 28. **L. 89:** (1)(a) amended, p. 1521, § 5, effective June 7. **L. 90:** (4) amended, p. 1840, § 20, effective May 31. **L. 91:** (4) amended, p. 1987, § 4, effective January 1, 1992. **L. 91, 1st Ex. Sess.:** (4) repealed, p. 13, § 3, effective July 5. **L. 92:** (1)(a) and (3) amended and (5) added, p. 2219, § 1, effective May 29; (1)(b) amended, p. 1728, § 21, effective July 1. **L. 94:** (1)(a)(I) amended, p. 1990, § 1, effective July 1. **L. 96:** (1)(b) and (5) amended, p. 1129, § 5, effective July 1. **L. 2002:** (1), (2), (3), and (5) amended, p. 1107, § 5, effective August 7. **L. 2003:** (1)(b) amended, p. 2003, § 70, effective May 22. **L. 2007:** (1)(a)(I), (1)(a)(IV), (2), and (3)(a) amended and (6) and (7) added, p. 343, § 2, effective August 3; (5)(c) amended, p. 555, § 2, effective August 3. **L. 2008:** (5)(c) amended and (5)(d) added, p. 16, § 1, effective March 6. **L. 2009:** (5)(d)(II) amended, (SB 09-292), ch. 369, p. 1981, § 117, effective August 5.

39-30-105.5. Credit against Colorado income taxes based on expenditures for research and experimental activities. (1) Any taxpayer who makes expenditures in research and experimental activities, as defined in section 174 of the federal "Internal Revenue Code of 1986", as amended, which activities are conducted in an enterprise zone for the purpose of carrying out a trade or business, shall be allowed a credit against the income tax imposed by article 22 of this title as follows:

(a) For income tax years commencing on or after January 1, 1989, an amount equal to three percent of the amount by which the amount expended for research and experimental activities in the enterprise zone in the income tax year of the taxpayer exceeds the

taxpayer's average of the total actual expenditures for such purposes made in the same area as that which comprises the enterprise zone in the next preceding two income tax years.

(b) Repealed.

(2) In any one tax year, the amount of such credit allowable for deduction from the taxpayer's tax liability shall be the total of:

(a) Twenty-five percent of the total amount of such credit, with the balance carrying forward to the next tax year; and

(b) Any applicable carryforward amount, which amount shall be twenty-five percent of the original amount of such credit. The amount by which the credit allowed by subsection (1) of this section in any one taxable year exceeds the credit allowed to be deducted pursuant to paragraph (a) of this subsection (2) may be carried forward until the total amount of the credit is used.

(3) As used in this section, the term "expenditures in research and experimental activities" means expenditures made for such purposes, other than expenditures of moneys made available to the taxpayer pursuant to federal or state law, which are paid as expenses under the provisions of the federal "Internal Revenue Code of 1986", as amended.

Source: L. 88: Entire section added, p. 1349, § 1, effective July 1. L. 89: (1)(a) amended and (1)(b) repealed, pp. 1522, 1523, §§ 7, 11, effective June 7.

39-30-105.6. Credit against tax - rehabilitation of vacant buildings. (1) For income tax years commencing on or after January 1, 1989, any taxpayer who is the owner or tenant of a building which is located in an enterprise zone, which is at least twenty years old, and which has been unoccupied for at least two years and who makes qualified expenditures for the purpose of rehabilitating said building shall be allowed a credit against the income tax imposed by article 22 of this title in an amount equal to twenty-five percent of the aggregate qualified expenditures per building or fifty thousand dollars per building, whichever is less.

(2) Any taxpayer who is allowed a credit for costs incurred in the rehabilitation of property pursuant to the provisions of section 38 of the federal "Internal Revenue Code of 1986", as amended, shall not be allowed the credit provided for in subsection (1) of this section.

(3) If the amount of the credit allowed pursuant to the provisions of this section exceeds the amount of income taxes otherwise due on the income of the taxpayer in the income tax year for which the credit is being claimed, the amount of the credit not used as an offset against income taxes in said income tax year may be carried forward as a credit against subsequent years' income tax liability for a period not exceeding five years and shall be applied first to the earliest income tax years possible. Any credit remaining after said period shall not be refunded or credited to the taxpayer.

(4) As used in this section, unless the context otherwise requires: "Qualified expenditures" means expenditures associated with any exterior improvements, structural improvements, mechanical improvements, or electrical improvements necessary to rehabilitate for commercial use a building which meets the requirements established in subsection (1) of this section. "Qualified expenditures" includes, but shall not be limited to, expenditures associated with demolition, carpentry, sheetrock, plaster, painting, ceilings, fixtures, doors, windows, sprinkler systems installed for fire protection purposes, roofing and flashing, exterior repair, cleaning, tuckpointing, and cleanup. "Qualified expenditures" does not include expenditures, commonly referred to as soft costs, which include, but are not limited to, costs associated with appraisals; architectural, engineering, and interior design fees; legal, accounting, and realtor fees; loan fees; sales and marketing; closing; building permit, use, and inspection fees; bids; insurance; project signs and phones; temporary power; bid bonds; copying; and rent loss during construction. "Qualified expenditures" also does not include costs associated with acquisition; interior furnishings; new additions except as may be required to comply with building and safety codes; excavation; grading; paving; landscaping; and repairs to outbuildings.

(5) Any form filed with the department of revenue for the purpose of claiming the credit allowed by this section shall be accompanied by a copy of the certification of the qualified

nature of the expenditures furnished to the taxpayer by the enterprise zone administrator and by copies of any receipts, bills, or other documentation of the qualified expenditures claimed for the purpose of receiving the credit.

Source: L. 89: Entire section added, p. 1519, § 1, effective June 7.

39-30-106. Sales and use tax - machinery and equipment exempted. (1) (a) On or after July 1, 1995, purchases of machinery or machine tools, or parts thereof, and materials for the construction or repair of machinery or machine tools, in excess of five hundred dollars to be used solely and exclusively in an enterprise zone in manufacturing tangible personal property, for sale or profit, whether or not such purchases are capitalized or expensed, are exempt from taxation under article 26 of this title.

(b) The provisions of section 39-26-709 (1) shall govern the administration of this subsection (1), except to the extent that such section and this subsection (1) are inconsistent. For purposes of this section, in addition to the definition of "manufacturing" found in section 39-26-709 (1) (c) (III), "manufacturing" shall include refining, blasting, exploring, mining and mined land reclamation, quarrying for, processing and beneficiation, or otherwise extracting from the earth or from waste or stockpiles or from pits or banks any natural resource.

(2) Repealed.

Source: L. 86: Entire article added, p. 1141, § 1, effective July 1. L. 87: Entire section amended, p. 1451, § 26, effective June 22. L. 88: Entire section amended, p. 1317, § 15, effective May 29. L. 89: Entire section amended, p. 1523, § 8, effective June 7. L. 91: Entire section amended, p. 2428, § 2, effective June 8; entire section amended, p. 1975, § 1, effective July 1, 1992. L. 95: (1)(a) amended, p. 137, § 2, effective April 7. L. 2004: (1)(b) amended, p. 1047, § 21, effective July 1. L. 2007: (1)(b) amended, p. 1177, § 6, effective May 23.

Editor's note: (1) Subsection (2)(b) provided for the repeal of subsection (2) unless a certified or licensed air carrier of persons or property executed or delivered to the state of Colorado, before July 1, 1994, a letter of commitment to operate an aircraft maintenance facility employing more than two thousand persons in the state. (See L. 91, p. 1975.)

(2) Amendments to this section by Senate Bill 91-131 and House Bill 91-1182 were harmonized.

Cross references: For the legislative declaration contained in the 2007 act amending subsection (1)(b), see section 1 of chapter 281, Session Laws of Colorado 2007.

ANNOTATION

Only the first \$150,000 of the purchase price of used machinery is exempt from taxation pursuant to this section. By incorporating the provisions of § 39-26-114 (1) to govern the administration of this exemption, the limitation on purchases of used equipment contained in the federal investment tax credit is also incorporated pursuant to § 39-26-114 (1)(d). Colo. Dept. of Rev. v. Cray Computer Corp., 18 P.3d 1277 (Colo. 2001).

By its terms, this section governs when it conflicts with § 39-26-114 (1). The "capital-

ized and expensed" language in this section thus prevents the depreciability and useful life requirements of the federal investment tax credit from being applied to purchases of machinery that are exempt from state sales tax made within enterprise zones and the regional transportation district and certain other districts could not impose use tax on such purchases. Ball Corp. v. Fisher, 51 P.3d 1053 (Colo. App. 2001).

39-30-107. Zoning regulations and labor agreements not affected. Nothing in this article shall affect any zoning measure or labor-management agreement in effect when an enterprise zone is established or adopted or entered into after the establishment.

Source: L. 86: Entire article added, p. 1142, § 1, effective July 1.

39-30-107.5. Taxable property valuations - sales taxes - incentives - definitions.

(1) (a) Notwithstanding any law to the contrary, any special district, county, municipality, or city and county within an enterprise zone may negotiate with any taxpayer who qualifies for a credit pursuant to section 39-30-105, who establishes a new business facility within an enterprise zone, or who expands a facility within an enterprise zone, the expansion of which constitutes a new business facility, for an incentive payment or credit equal to not more than the amount of the taxes levied upon the taxable property of the taxpayer; but in no instance shall any such negotiation result in such an incentive payment or credit which is greater than the difference between the current property tax liability and the tax liability for the same property for the year preceding the year in which the enterprise zone was approved.

(b) A special district shall not enter into an agreement pursuant to the provisions of this subsection (1) unless, prior to or simultaneous with the execution of the agreement, the taxpayer also enters into an agreement with a municipality or county pursuant to this section.

(2) Notwithstanding any law to the contrary, any county, municipality, or city and county within an enterprise zone may negotiate with any taxpayer who qualifies for a credit pursuant to section 39-30-105, who establishes a new business facility within an enterprise zone, or who expands a facility within an enterprise zone, the expansion of which constitutes a new business facility, a refund of the sales taxes levied by such county, municipality, or city and county for the purchase of equipment, machinery, machine tools, or supplies used in the taxpayer's business in the enterprise zone.

(3) As used in this section, unless the context otherwise requires:

(a) "Facility" means a facility as defined in section 39-30-105 (7) (c).

(b) "New business facility" means a new business facility as defined in section 39-30-105 (7) (e).

(c) "Special district" means a special district as defined in section 32-1-103 (20), C.R.S.

Source: L. 87: Entire section added, p. 1472, § 4, effective May 28. L. 92: Entire section amended, p. 2220, § 4, effective May 29. L. 94: (1) amended, p. 2834, § 5, effective January 1, 1995. L. 95: Entire section amended, p. 1213, § 2, effective May 31. L. 2005: (1) amended and (3)(c) added, pp. 107, 108, §§ 2, 3, effective August 8. L. 2007: IP(3), (3)(a), and (3)(b) amended, p. 352, § 10, effective August 3.

39-30-107.6. Parallel credits and refunds - insurance premium taxes. (1) Any taxpayer who is subject to the tax on insurance premiums established by sections 10-3-209, 10-5-111, and 10-6-128, C.R.S., and who is therefore exempt from the payment of income tax and who is otherwise eligible to claim a credit or refund pursuant to this article may claim such credit or refund against such insurance premium tax to the same extent as the taxpayer would have been able to claim such credit or refund against income tax.

(2) For purposes of administering this section, any reference in this article to "income tax year" means the calendar year.

Source: L. 89: Entire section added, p. 1519, § 1, effective June 7.

39-30-108. Rules and regulations. (1) In accordance with article 4 of title 24, C.R.S., the executive director of the department of revenue shall promulgate rules and regulations for the implementation of sections 39-30-103.5 to 39-30-107.5.

(2) In accordance with article 4 of title 24, C.R.S., the commissioner of insurance shall promulgate rules and regulations for the implementation of section 39-30-107.6.

Source: L. 86: Entire article added, p. 1142, § 1, effective July 1. L. 89: Entire section amended, p. 1523, § 9, effective June 7.

39-30-109. Repeal of article. (Repealed)

Source: **L. 86:** Entire article added, p. 1142, § 1, effective July 1. **L. 87:** Entire section amended, p. 1472, § 5, effective May 28. **L. 89:** Entire section amended, p. 1523, § 10, effective June 7. **L. 90:** Entire section amended, p. 1753, § 2, effective May 24. **L. 91, 1st Ex. Sess.:** Entire section repealed, p. 13, § 4, effective July 5.

39-30-110. Electronic submissions. (1) The Colorado office of economic development shall collaborate with the Colorado economic development commission and the department of revenue to develop the capability to allow taxpayers that intend to claim one or more income tax credits pursuant to this article to obtain any necessary certification, including pre-certification requirements, from the enterprise zone administrator in an electronic format. The Colorado office of economic development shall implement the electronic submission system by January 1, 2013. If the Colorado office of economic development is unable to implement an electronic submission system by January 1, 2013, the office shall submit a report to the Colorado economic development commission and the general assembly that explains the reasons that the implementation of such system has not been accomplished.

(2) Nothing in subsection (1) of this section shall be construed to prohibit a taxpayer that intends to claim one or more income tax credits pursuant to this article from submitting printed copies of certification forms, including precertification requirements.

Source: **L. 2010:** Entire section added, (SB 10-162), ch. 395, p. 1878, § 3, effective January 1, 2012.

39-30-111. Department of revenue - enterprise zone data - electronic filing - submission of carryforward schedule. (1) For the 2012 income tax year and each income tax year thereafter, any taxpayer that claims one or more income tax credits pursuant to this article shall file a state income tax return with the department of revenue in an electronic format, unless filing in an electronic format would cause undue hardship to the taxpayer because the taxpayer does not have access to a computer, or does not have sufficient internet access, internet capability, or computer knowledge to file income taxes electronically.

(2) For the 2012 income tax year and each income tax year thereafter, any taxpayer that claims one or more income tax credits pursuant to this article shall submit to the department of revenue, along with the taxpayer's state income tax return, a full carryforward schedule for each income tax credit claimed pursuant to this article.

(3) For the 2012 income tax year and each income tax year thereafter, the department of revenue shall aggregate and report data on all of the income tax credits that are claimed pursuant to this article for each income tax year. The department shall categorize such aggregated data by the date that the income tax credit was certified by an enterprise zone administrator, the specific income tax credit allowed pursuant to this article that each taxpayer was authorized to claim, and the total amount of the income tax credits claimed for each income tax credit allowed pursuant to this article.

(4) The department of revenue shall submit the data collected pursuant to subsection (2) of this section and aggregated pursuant to subsection (3) of this section to the Colorado office of economic development on August 1, 2013, and on August 1 each year thereafter.

Source: **L. 2010:** Entire section added, (SB 10-162), ch. 395, p. 1878, § 3, effective January 1, 2012. **L. 2011:** (4) amended, (HB 11-1303), ch. 264, p. 1177, § 97, effective January 1, 2012.

39-30-112. Data provided to department of revenue. (1) On or before September 30 of each calendar year, the director of the Colorado office of economic development or the director's designee shall transmit to the department of revenue the data regarding

income tax credits allowed pursuant to this article that are certified by enterprise zone administrators from January 1 through June 30 of the same calendar year.

(2) On or before March 31 of each calendar year, the director of the Colorado office of economic development or the director's designee shall transmit to the department of revenue the data regarding income tax credits allowed pursuant to this article that are certified by enterprise zone administrators from July 1 through December 31 of the previous calendar year.

Source: L. 2010: Entire section added, (SB 10-162), ch. 395, p. 1879, § 3, effective January 1, 2012.

Assistance for the Elderly or Disabled

ARTICLE 31

Property Tax - Rent - Heat or Fuel - Assistance for the Elderly or Disabled

39-31-101.	Real property tax assistance - eligibility - applicability - definitions.	39-31-104.	Heat or fuel expenses assistance - eligibility - applicability - definitions.
39-31-102.	Procedures to obtain grant.	39-31-105.	Executive director - rule-making.
39-31-103.	Notification of availability of assistance.		

39-31-101. Real property tax assistance - eligibility - applicability - definitions.

(1) (a) Individuals having resided within this state for the entire taxable year who are sixty-five years of age or older during the taxable year shall be eligible for a grant to be determined with respect to the income taxes imposed by article 22 of this title based upon the payment by such persons of real estate taxes, including taxes on mobile homes, or trailer coach specific ownership tax on, or tax-equivalent payments with respect to, such residences occupied by such persons, subject to the additional qualification requirements of this section.

(b) (I) A husband and wife shall be treated as jointly qualifying for the grant under paragraph (a) of this subsection (1) if either meets the age requirement and they jointly meet all the limitations of subsection (3) of this section. In all cases a husband and wife shall file one joint claim.

(II) A surviving spouse fifty-eight years of age or older shall be treated as qualifying for the grant under paragraph (a) of this subsection (1) if such surviving spouse meets all the limitations imposed by subsection (3) of this section.

(c) (I) The grant authorized by this section shall also be allowed to individuals having resided in this state for the entire taxable year and coming within the limitations imposed by subsection (3) of this section who, regardless of age, were disabled during the entire taxable year to a degree sufficient to qualify for the payment to them of full benefits from any bona fide public or private plan or source based solely upon such disability.

(II) An individual is disabled for the purposes of subparagraph (I) of this paragraph (c) if such individual is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted for a continuous period of not less than twelve months.

(d) Eligibility under more than one provision of this subsection (1) shall not operate to increase the amount of any grant available to an individual or husband and wife under subsection (2) of this section.

(2) Such grant shall be the amount of the general property taxes actually paid on the residence or the amount of taxes actually paid on a mobile home, plus any tax-equivalent payments computed pursuant to subsection (4) of this section, with respect to the rent of a trailer space during the year for which such grant is claimed, the amount of the specific

ownership tax actually paid on a trailer coach, or the amount of the tax-equivalent payments, computed pursuant to subsection (4) of this section, actually made during the year for which such grant is claimed, but in no event may it exceed:

(a) In the case of an individual:

(I) For grants claimed for years commencing prior to January 1, 1999, five hundred dollars reduced by twenty percent of the amount by which the individual's income exceeds five thousand dollars;

(II) For grants claimed for years commencing on or after January 1, 1999, but prior to January 1, 2008, six hundred dollars reduced by ten percent of the amount by which the individual's income exceeds five thousand dollars; and

(III) For grants claimed for years commencing on or after January 1, 2008, six hundred dollars reduced by ten percent of the amount by which the individual's income exceeds six thousand dollars in 2008, and, each year thereafter, the amount for the prior year adjusted for inflation;

(b) In the case of a husband and wife:

(I) For grants claimed for years commencing prior to January 1, 1999, five hundred dollars reduced by twenty percent of their income over eight thousand seven hundred dollars;

(II) For grants claimed for years commencing on or after January 1, 1999, but prior to January 1, 2008, six hundred dollars reduced by ten percent of their income over eight thousand seven hundred dollars; and

(III) For grants claimed for years commencing on or after January 1, 2008, six hundred dollars reduced by ten percent of their income over nine thousand seven hundred dollars in 2008, and, each year thereafter, the amount for the prior year adjusted for inflation.

(2.5) In 2000 and in every even-numbered year thereafter, the finance committees of the senate and the house of representatives shall examine the grant amounts and reduction percentages set forth in subsection (2) of this section, considering the level of the federal poverty index and such other information as is available to the committees, and shall determine whether said amounts and percentages should be modified.

(3) Such grant shall be allowed to such persons as described in subsection (1) of this section who meet the following requirements:

(a) Are not claimed as an exemption for purposes of Colorado income tax by any other person for the taxable year;

(b) Have income from all sources for the taxable year of less than the maximum amount for which such persons are eligible to receive a grant based on the operation of paragraphs (a) and (b) of subsection (2) of this section, including, but not limited to, for this purpose, alimony, support money, cash public assistance and relief, pension or annuity benefits, federal social security benefits, veterans' benefits, nontaxable interest, workers' compensation, and unemployment compensation benefits. For the purposes of this paragraph (b), the following shall not be considered income:

(I) Outright gifts;

(II) Medicaid payments specifically provided for the payment of medicare premiums; and

(III) Those specific veterans' benefits that are service-connected disability compensation payments. For the purposes of this subparagraph (III), "service-connected disability compensation payments" means those payments made for permanent disability, which disability shall be limited to loss of or loss of use of both lower extremities so as to preclude locomotion without the aid of braces, crutches, canes, or a wheelchair; loss of use of both hands; blindness in both eyes, including such blindness with only light perception; or loss of one lower extremity together with residuals or organic disease or injury that so affects the functions of balance or propulsion as to preclude locomotion without the use of a wheelchair.

(4) (a) The tax-equivalent amount for persons otherwise qualified who paid rent for the right to occupy premises, upon which ad valorem taxes were levied, as a residence during the taxable year shall be considered as twenty percent of the actual rent paid during the taxable year, not including any charge for utilities or food.

(b) To qualify as a tax-equivalent payment, rent must have been paid as a part of a bona fide tenancy or leasing agreement and shall not include any portion of payments made to institutions or facilities commonly known as nursing homes but shall include rent paid to a public housing authority and rent paid for the use of a mobile home or paid on trailer space if paid as a part of a bona fide tenancy.

(5) As used in this section, "inflation" means the annual percentage change in the United States department of labor, bureau of labor statistics, consumer price index for Denver-Boulder-Greeley, all items, all urban consumers, or its successor index.

Source: **L. 87:** Entire article added, p. 1453, § 30, effective June 22. **L. 90:** (3)(b) amended, p. 574, § 73, effective July 1. **L. 98:** (2)(a), (2)(b), and (3)(b) amended and (2.5) added, p. 513, § 1, effective August 5. **L. 2000:** (3)(b) amended, p. 1110, § 1, effective May 26. **L. 2007:** (2) and IP(3)(b) amended and (5) added, p. 1388, § 1, effective August 3.

39-31-102. Procedures to obtain grant. (1) A grant authorized by section 39-31-101 or 39-31-104 shall be paid from the reserve for refunds created by section 39-22-622. Payments shall be made on a quarterly basis, with the amount of each payment equal to the total amount of the grant divided by the number of quarters remaining in the calendar year in which the grant is awarded, with the calculation including the quarter in which the grant is awarded. Claimants meeting all qualification requirements for an entire taxable year shall be entitled to a grant allowable pursuant to section 39-31-101 or 39-31-104. Grants paid pursuant to this subsection (1) shall be included for informational purposes in the general appropriation bill or in supplemental appropriation bills for the purpose of complying with the limitation on state fiscal year spending imposed by section 20 of article X of the state constitution and section 24-77-103, C.R.S.

(2) A grant authorized by section 39-31-101 or 39-31-104 shall be claimed on such forms as prescribed by the executive director. If a sales tax refund is allowed for any given income tax year in accordance with section 39-22-120 or 39-22-2002, such forms shall include provisions allowing qualified individuals to apply for the refund pursuant to section 39-22-120 (5) (c) or 39-22-2003 (5) (c).

(3) (a) If two or more persons, other than husband and wife, are entitled to a grant authorized by section 39-31-101 or 39-31-104, it may be claimed by either or any of such persons meeting the qualifications therefor. When two or more persons claim the grant for the same residence, the executive director is authorized to determine the proper allocation of such grant.

(b) No grant received pursuant to this section shall be treated as income for purposes of determining the eligibility of any person for old age pension benefits under article 2 of title 26, C.R.S.

(4) The property tax assistance grant shall in no case exceed the amount of the general property taxes actually paid. A grant for property taxes or tax-equivalent amounts paid under section 39-31-101 shall not be made unless properly claimed on or before the expiration of twenty-four months after the end of the income tax year during which such taxes or tax-equivalent amounts were actually paid.

(5) Any person who is claimed as an exemption for purposes of the Colorado income tax by any other person for the taxable year shall be ineligible for the grant authorized by this section.

(6) The grant for heat or fuel expenses shall in no case exceed the amount of the heat or fuel expenses actually paid and shall not be made unless the appropriate form claiming the same is filed with the department of revenue on or before the expiration of twenty-four months after the end of the taxable year for which such credit or refund is claimed.

Source: **L. 87:** Entire article added, p. 1454, § 30, effective June 22. **L. 93:** (1) amended, p. 1510, § 11, effective June 6. **L. 94:** (1) amended, p. 1805, § 3, effective May 31. **L. 98, 2nd Ex. Sess.:** (2) amended, p. 7, § 2, effective September 16. **L. 99:** (2) amended, p. 1317, § 3, effective August 4. **L. 2004:** (1) amended, p. 689, § 1, effective April 28.

39-31-103. Notification of availability of assistance. (1) The executive director shall prescribe and have prepared forms for the purpose of notifying individuals of the qualifying requirements for entitlement to a grant authorized pursuant to section 39-31-101 or 39-31-104. Such forms shall be provided annually in sufficient quantities to accomplish the following:

(a) Each county department of social services shall mail a copy of such form annually to all recipients of old age pensions within said county.

(b) The public employees' retirement association shall mail a copy of such form to all beneficiaries.

(c) Copies of such forms shall be made available to other public and private pension systems, including those established by congress, for purposes of notification of eligibility requirements.

Source: L. 87: Entire article added, p. 1455, § 30, effective June 22.

39-31-104. Heat or fuel expenses assistance - eligibility - applicability - definitions. (1) (a) (I) Individuals having resided within this state for the entire taxable year who are sixty-five years of age or older during the taxable year shall be eligible for a grant to be determined with respect to the income taxes imposed by article 22 of this title to aid in the payment by such persons of heat or fuel expenses for residences occupied by such persons, subject to the additional qualification requirements of this section.

(II) For persons otherwise qualified who paid heat or fuel expenses indirectly as part of their rental payments, it shall be presumed that ten percent of the actual rent paid during the taxable year was for heat or fuel expenses. For rental payments to qualify under this subparagraph (II), they must have been paid as a part of a bona fide tenancy or lease agreement. Rental payments made to institutions or facilities commonly known as nursing homes shall not qualify, but rental payments made to a public housing authority or for the use of a mobile home shall qualify if paid as a part of a bona fide tenancy or lease agreement.

(b) (I) A husband and wife shall be treated as jointly qualifying for the grant under paragraph (a) of this subsection (1) if either meets the age requirement and they jointly meet all the limitations of subsection (3) of this section. In all cases, a husband and wife shall file one joint claim.

(II) A surviving spouse fifty-eight years of age or older shall be treated as qualifying for the grant under paragraph (a) of this subsection (1) if such surviving spouse meets all the limitations imposed by subsection (3) of this section.

(c) (I) The grant authorized by this section shall also be allowed to individuals having resided in this state for the entire taxable year and coming within the limitations imposed by subsection (3) of this section who, regardless of age, were disabled during the entire taxable year to a degree sufficient to qualify for the payment to them of full benefits from any bona fide public or private plan or source based solely upon such disability.

(II) An individual is disabled for the purposes of subparagraph (I) of this paragraph (c) if such individual is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted for a continuous period of not less than twelve months.

(d) Eligibility under more than one provision of this subsection (1) shall not operate to increase the amount of any grant available to an individual or a husband and wife under subsection (2) of this section.

(e) The grant provided by this section shall apply to income tax years commencing on or after January 1, 1987.

(2) Such grant shall be as follows:

(a) In the case of an individual:

(I) For grants claimed for years commencing prior to January 1, 1999, one hundred sixty dollars reduced by six and four-tenths percent of the amount by which the individual's income exceeds five thousand dollars;

(II) For grants claimed for years commencing on or after January 1, 1999, but prior to January 1, 2008, one hundred ninety-two dollars reduced by three and two-tenths percent of the amount by which the individual's income exceeds five thousand dollars; and

(III) For grants claimed for years commencing on or after January 1, 2008, one hundred ninety-two dollars reduced by three and two-tenths percent of the amount by which the individual's income exceeds six thousand dollars in 2008, and, each year thereafter, the amount for the prior year adjusted for inflation;

(b) In the case of a husband and wife:

(I) For grants claimed for years commencing prior to January 1, 1999, one hundred sixty dollars reduced by six and four-tenths percent of their income over eight thousand seven hundred dollars;

(II) For grants claimed for years commencing on or after January 1, 1999, but prior to January 1, 2008, one hundred ninety-two dollars reduced by three and two-tenths percent of their income over eight thousand seven hundred dollars; and

(III) For grants claimed for years commencing on or after January 1, 2008, one hundred ninety-two dollars reduced by three and two-tenths percent of their income over nine thousand seven hundred dollars in 2008, and, each year thereafter, the amount for the prior year adjusted for inflation.

(2.5) In 2000 and in every even-numbered year thereafter, the finance committees of the senate and the house of representatives shall examine the grant amounts and reduction percentages set forth in subsection (2) of this section, considering the level of federal poverty index and such other information as is available to the committees, and shall determine whether said amounts and percentages should be modified.

(3) Such grant shall be allowed to such persons as described in subsection (1) of this section who meet the following requirements:

(a) Are not claimed as an exemption for purposes of Colorado income tax by any other person for the taxable year;

(b) Have income from all sources for the taxable year of less than the maximum amount for which such persons are eligible to receive a grant based on the operation of paragraphs (a) and (b) of subsection (2) of this section, including, but not limited to, for this purpose, alimony, support money, cash public assistance and relief, pension or annuity benefits, federal social security benefits, veterans' benefits, nontaxable interest, workers' compensation, and unemployment compensation benefits. For the purposes of this paragraph (b), the following shall not be considered income:

(I) Outright gifts;

(II) Medicaid payments specifically provided for the payment of medicare premiums; and

(III) Those specific veterans' benefits that are service-connected disability compensation payments. For the purposes of this subparagraph (III), "service-connected disability compensation payments", as used in this paragraph (b), means those payments made for permanent disability, which disability shall be limited to loss of or loss of use of both lower extremities so as to preclude locomotion without the aid of braces, crutches, canes, or a wheelchair; loss of use of both hands; blindness in both eyes, including such blindness with only light perception; or loss of one lower extremity together with residuals or organic disease or injury that so affects the functions of balance or propulsion as to preclude locomotion without the use of a wheelchair.

(4) As used in this section, "inflation" means the annual percentage change in the United States department of labor, bureau of labor statistics, consumer price index for Denver-Boulder-Greeley, all items, all urban consumers, or its successor index.

Source: L. 87: Entire article added, p. 1455, § 30, effective June 22. L. 88: (1)(a)(II) amended, p. 1317, § 16, effective May 29. L. 90: (3)(b) amended, p. 574, § 74, effective July 1. L. 98: (2)(a), (2)(b), and (3)(b) amended and (2.5) added, p. 514, § 2, effective August 5. L. 2000: (3)(b) amended, p. 1111, § 2, effective May 26. L. 2007: (2) and IP(3)(b) amended and (4) added, p. 1389, § 2, effective August 3.

39-31-105. Executive director - rule-making. The executive director of the department of revenue may promulgate rules necessary for the administration of this article. Such rules shall be promulgated in accordance with article 4 of title 24, C.R.S.

Source: L. 2004: Entire section added, p. 399, § 2, effective August 4.

Rural Technology Enterprise Zone Act

ARTICLE 32

Rural Technology Enterprise Zone Act

39-32-101.	Short title.		ment in technology infra-
39-32-102.	Legislative declaration.		structure.
39-32-103.	Needs assessment and inven-	39-32-106.	Report to the general assem-
	tory - public hearing.		bly. (Repealed)
39-32-104.	Zones established.	39-32-107.	Rules.
39-32-105.	Credit against tax - invest-		

39-32-101. Short title. This article shall be known and may be cited as the “Rural Technology Enterprise Zone Act”.

Source: L. 98: Entire article added, p. 695, § 1, effective May 18.

39-32-102. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) The ability of the people in all parts of this state to access the internet, also known as the information superhighway, is an important component in the ability of the state to remain competitive in the fields of business and education as well as the ability of government to provide services to these people both now and in the future; and

(b) A disparity currently exists in the state between the ability of people living in urban areas and people living in rural areas to access the internet because of a lack of adequate technology, infrastructure, and advance telecommunications service in rural areas.

(2) The general assembly further finds and declares that it is the policy of the state, in order to provide incentives for private businesses to invest in the infrastructure needed to improve the ability of the people living in rural areas to access the internet, to establish a program to provide a tax incentive to enterprises that provide such infrastructure in designated areas to be known as rural technology enterprise zones.

Source: L. 98: Entire article added, p. 695, § 1, effective May 18.

39-32-103. Needs assessment and inventory - public hearing. (1) In order to determine the extent to which the internet can be accessed in rural areas of the state, the public utilities commission shall conduct a technology infrastructure needs assessment and inventory in such areas to determine the status of internet access in rural areas. Such needs assessment and inventory shall specifically examine the following:

(a) The need and ability to provide or improve internet access in rural areas in the state;

(b) The existence and identification of any barriers that prevent or reduce internet access in rural areas; and

(c) The types of technology infrastructure, including advanced and emerging technologies, that would improve internet access in rural areas.

(2) After conducting the needs and assessment inventory pursuant to subsection (1) of this section, the public utilities commission shall conduct a public hearing on the designation of rural technology enterprise zones pursuant to section 39-32-104. The commission shall provide public notice of such hearing to residents living within any proposed rural technology enterprise zone and to any other interested parties the commission may identify.

The commission shall consider any testimony or other evidence presented at such hearing in designating any rural technology enterprise zone pursuant to section 39-32-104.

Source: L. 98: Entire article added, p. 696, § 1, effective May 18.

39-32-104. Zones established. (1) Based upon the needs and assessment inventory and the evidence received during the public hearing conducted pursuant to section 39-32-103, the public utilities commission may designate rural areas in the state as rural technology enterprise zones. In designating such zones, the commission shall specify by rule, based upon the needs and assessment inventory and the evidence received at the public hearing, the specific technology infrastructure needs of each rural technology enterprise zone and the types of investments that will meet those needs. For each rural technology enterprise zone designated pursuant to this section, the commission shall further specify the following:

- (a) The boundaries of the rural technology enterprise zone;
- (b) The potential for increasing internet access within the rural technology enterprise zone;
- (c) The specific technology infrastructure required to provide adequate internet access within the zone and any unique needs or characteristics of the zone;
- (d) The specific investments in technology infrastructure that will qualify for income tax credits in the zone pursuant to section 39-32-105; and
- (e) Any other information the commission deems pertinent.

Source: L. 98: Entire article added, p. 696, § 1, effective May 18.

39-32-105. Credit against tax - investment in technology infrastructure. (1) There shall be allowed to any person as a credit against the tax imposed by article 22 of this title, for income tax years commencing on or after January 1, 1999, but prior to January 1, 2005, an amount equal to ten percent of the amount of the total investment made during such years in technology infrastructure required to provide internet access in rural technology enterprise zones. Such credit may be claimed only for specific capital investments in technology infrastructure that will qualify for income tax credits in such zone as specified by the public utilities commission pursuant to section 39-32-104 (1) (d). The credit claimed by a person pursuant to this section shall not exceed one hundred thousand dollars in any one tax year.

(2) If the credit allowed under this section exceeds the income taxes otherwise due on the claimant's income, the amount of the credit not used as an offset against income taxes may be carried forward as a tax credit against subsequent years' income tax liability for a period not to exceed ten years and shall be applied first to the earliest years possible.

Source: L. 98: Entire article added, p. 697, § 1, effective May 18.

39-32-106. Report to the general assembly. (Repealed)

Source: L. 98: Entire article added, p. 697, § 1, effective May 18. **L. 2008:** Entire section repealed, p. 1914, § 131, effective August 5.

39-32-107. Rules. The public utilities commission shall promulgate rules necessary for the administration of sections 39-32-103 and 39-32-104. The department of revenue shall promulgate rules necessary for the administration of section 39-32-105. Rules promulgated pursuant to this section shall be promulgated in accordance with article 4 of title 24, C.R.S.

Source: L. 98: Entire article added, p. 698, § 1, effective May 18. **L. 2008:** Entire section amended, p. 1914, § 132, effective August 5.

Alternative Fuels Rebate

ARTICLE 33

Alternative Fuels Rebate

39-33-101.	Definitions. (Repealed)	39-33-103.5.	Amount of rebate for costs incurred prior to July 1, 2015 - repeal. (Repealed)
39-33-102.	Rebate for motor vehicles using alternative fuels. (Repealed)	39-33-104.	Rules. (Repealed)
39-33-103.	Amount of rebate for costs incurred prior to July 1, 2009 - repeal. (Repealed)	39-33-105.	Alternative fuels rebate fund - repeal. (Repealed)
		39-33-106.	Repeal of article. (Repealed)

39-33-101. Definitions. (Repealed)

Source: **L. 98:** Entire article added, p. 1303, § 3, effective June 1. **L. 2000:** (4) amended, p. 1447, § 2, effective August 2. **L. 2002:** (2) repealed, p. 1067, § 4, effective August 7. **L. 2009:** Entire section amended, (HB 09-1331), ch. 416, p. 2303, § 5, effective June 4. **L. 2011:** Entire section repealed, (SB 11-163), ch. 13, p. 36, § 1, effective March 9.

39-33-102. Rebate for motor vehicles using alternative fuels. (Repealed)

Source: **L. 98:** Entire article added, p. 1304, § 3, effective June 1. **L. 2000:** IP(1) amended, p. 1447, § 3, effective August 2. **L. 2009:** IP(1) amended and (2) added, (HB 09-1331), ch. 416, p. 2306, § 6, effective June 4. **L. 2011:** Entire section repealed, (SB 11-163), ch. 13, p. 36, § 1, effective March 9.

39-33-103. Amount of rebate for costs incurred prior to July 1, 2009 - repeal. (Repealed)

Source: **L. 98:** Entire article added, p. 1304, effective June 1. **L. 99:** (2)(f) repealed, p. 984, § 11, effective May 28. **L. 2000:** (2)(a)(I) and (3) amended, p. 1447, § 4, effective August 2. **L. 2002:** (2)(b) amended, p. 1067, § 5, effective August 7. **L. 2009:** IP(1), (2)(a)(I), and (3) amended and (4) added, (HB 09-1331), ch. 416, p. 2306, § 7, effective June 4.

Editor's note: Subsection (4) provided for the repeal of this section, effective July 1, 2010. (See L. 2009, p. 2306.)

39-33-103.5. Amount of rebate for costs incurred prior to July 1, 2015 - repeal. (Repealed)

Source: **L. 2009:** Entire section added, (HB 09-1331), ch. 416, p. 2307, § 8, effective June 4. **L. 2011:** Entire section repealed, (SB 11-163), ch. 13, p. 36, § 1, effective March 9.

39-33-104. Rules. (Repealed)

Source: **L. 98:** Entire article added, p. 1306, § 3, effective June 1. **L. 2011:** Entire section repealed, (SB 11-163), ch. 13, p. 36, § 1, effective March 9.

39-33-105. Alternative fuels rebate fund - repeal. (Repealed)

Source: **L. 98:** Entire article added, p. 1306, § 3, effective June 1. **L. 2000:** (1)(c) added, p. 1448, § 5, effective August 2. **L. 2010:** (3) added, (HB 10-1388), ch. 362, p. 1717, § 4, effective June 7. **L. 2011:** IP(1), (2), and (3) amended and (4) added, (SB 11-163), ch. 13, p. 36, § 2, effective March 9.

Editor’s note: Subsection (4) provided for the repeal of this section, effective July 1, 2012. (See L. 2011, p. 36.)

39-33-106. Repeal of article. (Repealed)

Source: **L. 98:** Entire article added, p. 1307, § 3, effective June 1. **L. 2007:** Entire section amended, p. 2050, § 99, effective June 1. **L. 2009:** Entire section amended, (HB 09-1331), ch. 416, p. 2309, § 9, effective June 4. **L. 2011:** Entire section repealed, (SB 11-163), ch. 13, p. 36, § 1, effective March 9.

Taxation Commission

ARTICLE 34

Colorado Commission on Taxation

39-34-101 to 39-34-105. (Repealed)

Editor’s note: (1) This article was added in 2000. For amendments to this article prior to its repeal in 2003, consult the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

(2) Section 39-34-105 provided for the repeal of this article, effective January 1, 2003. (See L. 2001, p. 94.)

(3) Senate Bill 03-321 provided for the repeal of § 39-34-103 (2) and (4), effective August 6, 2003. However, due to the repeal of this article on January 1, 2003, the repeals made by Senate Bill 03-321 did not take effect.

Aviation Development Zone Act

ARTICLE 35

Aviation Development Zone Act

39-35-101.	Short title.		for new employees.
39-35-102.	Definitions.	39-35-105.	Reporting requirements.
39-35-103.	Zones established.	39-35-106.	Repeal of article.
39-35-104.	Aircraft manufacturer - credit		

39-35-101. Short title. This article shall be known and may be cited as the “Aviation Development Zone Act”.

Source: **L. 2005:** Entire article added, p. 1490, § 1, effective August 8.

39-35-102. Definitions. As used in this article, unless the context otherwise requires:

(1) “Aircraft manufacturer” means a business involved in the production of aircraft parts specifically used in the manufacture of aircraft or a business involved in the development of a proof of concept or prototype aircraft, a test and evaluation aircraft, a certification aircraft, or a production aircraft. “Aircraft manufacturer” shall not include a business or any portion of a business that is involved in the maintenance of aircraft.

(2) "Airport" means any public-use facility so designated or licensed by the federal aviation administration and listed in the national plan of integrated airport systems in accordance with section 47103 of title 49 of the United States Code.

(3) "Facility" means any factory or other building in which an aircraft manufacturer conducts business and in which employees of the aircraft manufacturer work on a regular basis.

(4) "New employee" means a full-time employee hired by an aircraft manufacturer to work at a facility that is located in an aviation development zone in the state. For purposes of this subsection (4), an employee shall work for at least thirty-five hours per week on a regular basis throughout the year performing duties at a facility in an aviation development zone in order to be considered a full-time employee.

(5) "Office" means the Colorado office of economic development created in section 24-48.5-101, C.R.S.

Source: L. 2005: Entire article added, p. 1490, § 1, effective August 8.

39-35-103. Zones established. Any airport in the state may register with the office to become an aviation development zone. Only the area included within the boundaries of the airport shall be included in the aviation development zone. The office may establish procedures for the registration of airports as aviation development zones pursuant to this article.

Source: L. 2005: Entire article added, p. 1491, § 1, effective August 8.

39-35-104. Aircraft manufacturer - credit for new employees. (1) For any income tax year commencing on or after January 1, 2006, but before January 1, 2017, any aircraft manufacturer that is located in an aviation development zone in the state, that employs at least ten full-time employees within the zone, and that hires one or more new employees during the income tax year shall be allowed a credit against the income tax imposed by article 22 of this title in an amount equal to one thousand two hundred dollars for each new employee who is working within the zone, prorated according to the number of months the new employee was employed by the aircraft manufacturer during the income tax year.

(2) An aircraft manufacturer that qualifies for the credit allowed pursuant to this section shall be allowed the credit for each subsequent tax year for each additional new employee. Any credit shall be allowed for a maximum of twelve consecutive months for each new employee employed by the aircraft manufacturer.

(3) (a) The number of new employees employed during any income tax year shall be determined by dividing by twelve the sum of the number of new employees on the last business day of each month of the income tax year. If the aircraft manufacturer is in operation for less than the entire income tax year, the number of new employees shall be determined by dividing the sum of the number of new employees on the last business day of each full calendar month during the portion of such income tax year during which the aircraft manufacturer was in operation by the number of full calendar months in such income tax year.

(b) For the purpose of determining the amount of the credit allowed pursuant to this section in the case of an aircraft manufacturer that already operates a facility in an aviation development zone on January 1, 2006, or that opens a facility in an aviation development zone to replace another facility in or outside of an aviation development zone at which the aircraft manufacturer discontinued operations before the close of the first income tax year in which the credit is allowed pursuant to this section, the number of new employees for which the credit is claimed shall not exceed the difference between the average number of employees employed during the income tax year less the average number of employees employed at the existing facility or the replacement facility, as determined pursuant to paragraph (a) of this subsection (3), during the two income tax years preceding the income tax year in which the credit is claimed.

(4) If the total amount of the credits claimed by an aircraft manufacturer pursuant to the provisions of this section exceeds the amount of income taxes due on the income of the aircraft manufacturer in the income tax year for which the credits are being claimed, the amount of the credits not used as an offset against income taxes in said income tax year shall not be allowed as a refund but may be carried forward as a credit against subsequent years' tax liability for a period not to exceed five years and shall be applied first to the earliest income tax years possible. Any amount of the credit that is not used during said period shall not be refundable to the aircraft manufacturer.

(5) For purposes of this section, a partnership, S corporation, limited liability company, or other entity electing not to be taxed as a corporation may pass through the credits earned under this section in any tax year to its participating partners, shareholders, or members, referred to in this section as the "investors", in any percentage the entity chooses, up to the amount of the credit earned in the tax year. Credits earned but unclaimed in a tax year for which the entity elects to be taxed as a corporation may not be distributed to investors in a later tax year for which the entity elects not to be taxed as a corporation. In any tax year for which the entity elects not to be taxed as a corporation, all credits passed through to investors may be carried forward at the investor level for the carryover periods specified in this section.

(6) For purposes of this section, an aircraft manufacturer may only claim the new employee credit for employees for whom:

(a) The aircraft manufacturer withholds social security, medicare, and income taxes under the aircraft manufacturer's own federal and state taxpayer identification numbers; or

(b) The aircraft manufacturer is the work-site employer, as defined in section 8-70-114 (2) (a) (VII), C.R.S., and an employee leasing company, as defined in section 8-70-114 (2) (a) (V), C.R.S., as the employing unit for, or co-employer with, the aircraft manufacturer, withholds social security, medicare, and income taxes under the employee leasing company's own federal and state taxpayer identification numbers.

(7) The executive director of the department of revenue shall promulgate rules necessary for the administration of this section in accordance with article 4 of title 24, C.R.S.

Source: L. 2005: Entire article added, p. 1491, § 1, effective August 8. L. 2008: (6) amended, p. 17, § 2, effective March 6. L. 2009: (6)(b) amended, (SB 09-292), ch. 369, p. 1981, § 118, effective August 5.

39-35-105. Reporting requirements. (1) Any aircraft manufacturer that claims a new employee income tax credit pursuant to section 39-35-104 shall file an annual progress report with the office and the department of revenue within ninety days of the end of the manufacturer's income tax year.

(2) The annual progress report shall include, but shall not be limited to, the following:

(a) (I) If the aircraft manufacturer is a corporation, the corporate name of the aircraft manufacturer and the name of the chief officer of the aircraft manufacturer; or

(II) If the aircraft manufacturer is one or more individuals doing business as a partnership or other pass-through entity under a distinct business name, the business name used by the partnership or other pass-through entity.

(b) The business address and phone number of the aircraft manufacturer;

(c) A statement of the number of new employees for which the aircraft manufacturer claimed an income tax credit pursuant to section 39-35-104 and the total amount of the income tax credit claimed for the income tax year for which the report is prepared;

(d) Payroll or other data to verify the number of full-time employees employed by the aircraft manufacturer during the income tax year in which the aircraft manufacturer claimed an income tax credit pursuant to section 39-35-104 and data to verify the number of full-time employees employed by the aircraft manufacturer for the two income tax years immediately preceding such income tax year;

(e) The average annual compensation level, including benefits, of the full-time employees employed by the aircraft manufacturer;

(f) A statement of the total number of new employees retained during the income tax year for which the report is prepared if the aircraft manufacturer claimed an income tax credit pursuant to section 39-35-104 for the prior income tax year;

(g) A statement as to whether the aircraft manufacturer reduced employment at any other site in the state that is controlled by the aircraft manufacturer as a result of automation, merger, acquisition, corporate restructuring, or other business activity; and

(h) Any other information reasonably required by the office or the department of revenue to evaluate the progress and effectiveness of the incentives allowed to aircraft manufacturers pursuant to section 39-35-104.

(3) An annual progress report submitted to the office and the department of revenue shall include a signed certification as to the accuracy of the report by the chief officer of the aircraft manufacturer.

(4) The office shall include the annual progress reports submitted to the office pursuant to this section in an annual report to the general assembly.

(5) The department of revenue may review the annual progress reports submitted pursuant to this section and, on the basis of any information contained in such reports, conduct an audit of the taxpayer pursuant to section 24-35-108 (1) (c), C.R.S.

(6) The information submitted in the annual progress report to the office and the department of revenue shall be considered public records as defined in section 24-72-202 (6), C.R.S., and shall be preserved for at least five years by the office. The office shall be the custodian of the reports and shall make the reports available for inspection by any person at reasonable times. Nothing in this subsection (6) shall be construed to permit the disclosure to the public of any Colorado income tax return or of any information that reveals the amount of compensation paid to any individual employee.

Source: L. 2005: Entire article added, p. 1492, § 1, effective August 8.

39-35-106. Repeal of article. This article is repealed, effective January 1, 2018, unless it is continued or reestablished by the general assembly acting by bill prior to said date.

Source: L. 2005: Entire article added, p. 1494, § 1, effective August 8.

TITLE 40

UTILITIES

1871

1872

TITLE 40

UTILITIES

Cross references: For excavation requirements for underground utility facilities, see article 1.5 of title 9; for requests for criminal activity information from public utilities, see article 15.5 of title 16; for authority and procedure for the valuation and assessment of public utilities, see article 4 of title 39; for organization and operation of special districts, see title 32.

PUBLIC UTILITIES

General and Administrative

- Art. 1. Definitions, 40-1-101 to 40-1-104.
- Art. 1.1. People Service Transportation, 40-1.1-101 to 40-1.1-106.
- Art. 2. Public Utilities Commission - Renewable Energy Standard, 40-2-101 to 40-2-127.
- Art. 2.1. Transportation of Hazardous Materials (Repealed).
- Art. 2.2. Transportation of Nuclear Materials (Repealed).
- Art. 3. Regulation of Rates and Charges, 40-3-101 to 40-3-115.
- Art. 3.2. Air Quality Improvement Costs, 40-3.2-101 to 40-3.2-210.
- Art. 3.4. Emergency Telephone Access, 40-3.4-101 to 40-3.4-111.
- Art. 3.5. Regulation of Rates and Charges by Municipal Utilities, 40-3.5-101 to 40-3.5-107.
- Art. 4. Service and Equipment, 40-4-101 to 40-4-119.
- Art. 5. New Construction - Extension, 40-5-101 to 40-5-106.
- Art. 6. Hearings and Investigations, 40-6-101 to 40-6-124.
- Art. 6.5. Office of Consumer Counsel, 40-6.5-101 to 40-6.5-109.
- Art. 7. Enforcement - Penalties, 40-7-101 to 40-7-117.
- Art. 7.5. Civil Remedies Available to Utilities, 40-7.5-101 to 40-7.5-104.
- Art. 8. Unclaimed Funds for Overcharges, 40-8-101 to 40-8-105.
- Art. 8.5. Unclaimed Utility Deposits, 40-8.5-101 to 40-8.5-107.
- Art. 8.7. Low-income Energy Assistance, 40-8.7-101 to 40-8.7-112.
- Art. 9. Carriers Generally, 40-9-101 to 40-9-109.
- Art. 9.5. Cooperative Electric Associations, 40-9.5-101 to 40-9.5-207.
- Art. 9.7. Colorado Clean Energy Development Authority (Repealed).

Motor Carriers and Intrastate Telecommunications Services

- Art. 10. Motor Vehicle Carriers (Repealed).
- Art. 10.1. Motor Carriers, 40-10.1-101 to 40-10.1-507.
- Art. 10.5. Unified Carrier Registration System, 40-10.5-101 and 40-10.5-102.
- Art. 11. Contract Motor Carriers (Repealed).
- Art. 11.5. Independent Contractors - Motor Carriers, 40-11.5-101 and 40-11.5-102.
- Art. 12. Commercial Carriers - Motor Vehicles (Repealed).
- Art. 13. Towing Carriers - Motor Vehicles (Repealed).
- Art. 14. Carriers of Household Goods (Repealed).
- Art. 15. Intrastate Telecommunications Services, 40-15-101 to 40-15-510.
- Art. 16. Motor Vehicle Carriers Exempt from Regulation as Public Utilities (Repealed).
- Art. 16.5. Carriers of Sludge (Repealed).
- Art. 17. Telecommunications Relay Services for Disabled Telephone Users, 40-17-101 to 40-17-104.

RAILROADS

- Art. 18. Rail Fixed Guideway System Safety Oversight, 40-18-101 to 40-18-105.
- Art. 20. Organization and Government, 40-20-101 to 40-20-206.
- Art. 21. General Offices, 40-21-101 to 40-21-103.
- Art. 22. Consolidation, 40-22-101 to 40-22-107.
- Art. 23. Reorganization, 40-23-101 and 40-23-102.
- Art. 24. Electric and Street Railroads, 40-24-101 to 40-24-111.
- Art. 25. Express Business (Repealed).
- Art. 26. Railroad Tickets (Repealed).
- Art. 27. Killing Stock - Fencing, 40-27-101 to 40-27-115.
- Art. 28. Crossings (Repealed).
- Art. 29. Safety Appliances, 40-29-101 to 40-29-116.
- Art. 30. Fire Guards, 40-30-101 to 40-30-103.
- Art. 31. Overcharges, 40-31-101 and 40-31-102.
- Art. 32. Employees, 40-32-101 to 40-32-113.
- Art. 33. Damages to Employees, 40-33-101 to 40-33-109.

GEOTHERMAL HEAT

- Art. 40. Geothermal Heat Suppliers, 40-40-101 to 40-40-106.

PUBLIC UTILITIES

General and Administrative

ARTICLE 1

Definitions

Editor's note: Pursuant to §§ 40-1.1-101 and 40-1.1-104, people service transportation regulated by article 1.1 of this title is not subject to the laws and regulations of the public utilities commission.

40-1-101.	Public utilities law.	40-1-103.5.	Limited exemption of master meter operators - conditions
40-1-102.	Definitions.		- rules.
40-1-103.	Public utility defined.	40-1-104.	Securities - issuance.
40-1-103.3.	Alternative fuel vehicles - definition.		

40-1-101. Public utilities law. Articles 1 to 7 of this title shall be known and may be cited as the "Public Utilities Law" and shall apply to the public utilities and public services described in said articles 1 to 7 and to the commission referred to in article 2 of this title.

Source: L. 13: p. 464, § 1. C.L. § 2911. CSA: C. 137, § 1. CRS 53: § 115-1-1. C.R.S. 1963: § 115-1-1.

ANNOTATION

Law reviews. For article, "Trying to Get the P.U.C. to Let You Run a Truck", see 7 Dicta 4 (1930). For article, "Utility Services in Subdivisions Outside Municipal Boundaries", see 28 Rocky Mt. L. Rev. 483 (1956). For article, "Im-

pact of the Uniform Commercial Code on Colorado Law", see 42 Den. L. Ctr. J. 67 (1965). For article, "May Regulated Utilities Monopolize the Sun?", see 56 Den. L.J. 31 (1979).

40-1-102. Definitions. As used in articles 1 to 7 of this title, unless the context otherwise requires:

- (1) "Alternative fuel vehicle" means any automobile, truck, motor bus, boat, airplane,

train, tractor, or other type of motorized off-highway equipment or other self-propelled device or vessel that is capable of moving itself or being moved from place to place utilizing, in whole or in part, liquefied petroleum gas, natural gas, electricity, or a combination of natural gas and electricity as transportation fuel, whether or not the vehicle is used in agricultural, commercial, domestic, or industrial operations.

(1.5) "Commission" means the public utilities commission of the state of Colorado.

(2) "Commissioner" means one of the members of the commission.

(3) (a) "Common carrier" means:

(I) Every person directly or indirectly affording a means of transportation, or any service or facility in connection therewith, within this state by motor vehicle or other vehicle whatever by indiscriminately accepting and carrying passengers for compensation; and

(II) Every person affording a means of transportation within this state by railroad by indiscriminately accepting and carrying for compensation passengers or property.

(b) "Common carrier" does not include a motor carrier that provides transportation not subject to regulation pursuant to section 40-10.1-105 or that is subject to part 3, 4, or 5 of article 10.1 of this title.

(4) "Compensation" means any money, property, service, or thing of value charged or received, or to be charged or received, whether directly or indirectly.

(5) (a) "Cost-effective", with reference to a natural gas or electric demand-side management program or related measure, means having a benefit-cost ratio greater than one.

(b) In calculating the benefit-cost ratio, the benefits shall include, but are not limited to, the following, as applicable:

(I) The utility's avoided generation, transmission, distribution, capacity, and energy costs;

(II) The valuation of avoided emissions; and

(III) Nonenergy benefits as determined by the commission.

(c) In calculating the benefit-cost ratio, the costs shall include, but are not limited to, utility and participant expenditures for the following, as applicable:

(I) Program design, administration, evaluation, advertising, and promotion;

(II) Customer education;

(III) Incentives and discounts;

(IV) Capital costs; and

(V) Operation and maintenance expenses.

(6) "Demand-side management programs" or "DSM programs" means energy efficiency, conservation, load management, and demand response programs or any combination of these programs.

(7) "Education program" means a program, including, but not limited to, an energy audit, that contributes indirectly to a cost-effective demand-side management program. Education programs shall not be subject to independent cost-effectiveness requirements.

(8) "Full service customer" means a residential or commercial customer that purchases natural gas or electric supply from an investor-owned utility.

(9) "Net present value of revenue requirements" means the current worth of the expected stream of future revenue requirements associated with a particular resource portfolio, expressed in dollars in the year the plan is filed. To determine the current worth of the expected stream of future revenue requirements, a discount rate at the utility's weighted average cost of capital shall be applied to the expected stream of future revenue requirements.

(10) "Person" means any individual, firm, partnership, corporation, company, association, joint stock association, and other legal entity.

(11) "Renewable energy" means useful electrical, thermal, or mechanical energy converted directly or indirectly from resources of continuous energy flow or that are perpetually replenished and whose utilization is sustainable indefinitely. The term includes, without limitation, sunlight, the wind, geothermal energy, hydrodynamic forces, and

organic matter available on a renewable basis such as forest residues, agricultural crops and wastes, wood and wood wastes, animal wastes, livestock operation residue, aquatic plants, and municipal wastes.

Source: **L. 13:** p. 464, § 2. **L. 15:** p. 393, § 1. **C.L. § 2912. CSA:** C. 137, § 2. **CRS 53:** § 115-1-2. **C.R.S. 1963:** § 115-1-2. **L. 69:** p. 927, § 1. **L. 79:** (3) amended, p. 1561, § 28, effective June 20. **L. 80:** (3) amended, p. 742, § 1, effective June 30. **L. 84:** (3) amended, p. 1051, § 2, effective April 12. **L. 85:** (3) amended, p. 1307, § 2, effective May 29. **L. 94:** (6) added, p. 611, § 2, effective April 8. **L. 95:** (3) amended, p. 1209, § 21, effective May 31. **L. 96:** (3) amended, p. 143, § 1, effective April 8. **L. 2004:** (3)(b) amended, p. 905, § 31, effective May 21. **L. 2007:** (5) and (6) amended and (7) to (11) added, p. 982, § 1, effective May 22. **L. 2011:** (3)(a)(I) and (3)(b) amended, (HB 11-1198), ch. 127, p. 418, § 11, effective August 10. **L. 2012:** (1) amended and (1.5) added, (HB 12-1258), ch. 147, p. 529, § 1, effective August 8.

Cross references: (1) For further definition of common carriers, see § 40-9-102.

(2) For the legislative declaration contained in the 1994 act amending this section, see section 1 of chapter 102, Session Laws of Colorado 1994.

ANNOTATION

Neither the general assembly nor the commission has precisely defined contract carriage. *Miller Bros. v. Pub. Utils. Comm'n*, 185 Colo. 414, 525 P.2d 443 (1974); *Denver Cleanup Serv., Inc. v. Pub. Utils. Comm'n*, 192 Colo. 537, 561 P.2d 1252 (1977).

Distinction between common carriers and contract carriers. One of the fundamental distinctions between a contract carrier and a common carrier is that a contract carrier has an

obligation only to its contract customers and has no obligation to others desiring its carriage; in contrast, the common carrier must convey for all desiring its transportation. *Denver Cleanup Serv., Inc. v. Pub. Utils. Comm'n*, 192 Colo. 537, 561 P.2d 1252 (1977).

Applied in *Greeley Transp. Co. v. People*, 79 Colo. 307, 245 P. 720 (1926); *Jones v. Dressel*, 623 P.2d 370 (Colo. 1981); *Morey v. Pub. Utils. Comm'n*, 629 P.2d 1061 (Colo. 1981).

40-1-103. Public utility defined. (1) (a) (I) The term "public utility", when used in articles 1 to 7 of this title, includes every common carrier, pipeline corporation, gas corporation, electrical corporation, telephone corporation, water corporation, person, or municipality operating for the purpose of supplying the public for domestic, mechanical, or public uses and every corporation, or person declared by law to be affected with a public interest, and each of the preceding is hereby declared to be a public utility and to be subject to the jurisdiction, control, and regulation of the commission and to the provisions of articles 1 to 7 of this title.

(II) As used in this paragraph (a), "water corporation" includes a combined water and sewer corporation, whether as a single entity or as different entities under common ownership.

(b) Nothing in articles 1 to 7 of this title shall be construed to apply to:

(I) Irrigation systems, the chief or principal business of which is to supply water for the purpose of irrigation;

(II) Exemptions provided for in the constitution of the state of Colorado relating to municipal utilities;

(III) Hotels, motels, or other lodging-type entities that resell intrastate toll services to their lodging patrons and not to the general public;

(IV) Any consumer who owns pay telephone terminal equipment and who resells local exchange and toll service paid for by coin deposit, credit card, or otherwise by using the tariff services and facilities of regulated telephone utilities;

(V) The provision or resale to the general public of communications services over a cellular radio system. For purposes of this subparagraph (V), a "cellular radio" means a mobile communications system in which the radio frequency spectrum is divided into discrete channels which are assigned in groups to geographic cells within a service area and which are capable of being reused in different cells within that service area.

(VI) Providers of telephone or telecommunications service from inmates at penal institutions.

(2) (a) Every cooperative electric association, or nonprofit electric corporation or association, and every other supplier of electric energy, whether supplying electric energy for the use of the public or for the use of its own members, is hereby declared to be affected with a public interest and to be a public utility and to be subject to the jurisdiction, control, and regulation of the commission and to the provisions of articles 1 to 7 of this title.

(b) (I) Paragraph (a) of this subsection (2) requiring regulation by the commission shall not be applicable to a cooperative electric association which has voted to exempt itself from regulation pursuant to the provisions of section 40-9.5-103. Regulation of such cooperative electric associations shall be in the manner provided in part 1 of article 9.5 of this title.

(II) Repealed.

(c) The supply of electricity or heat to a consumer of the electricity or heat from solar generating equipment located on the site of the consumer's property, which equipment is owned or operated by an entity other than the consumer, shall not subject the owner or operator of the on-site solar generating equipment to regulation as a public utility by the commission if the solar generating equipment is sized to supply no more than one hundred twenty percent of the average annual consumption of electricity by the consumer at that site. For purposes of this paragraph (c), the consumer's site shall include all contiguous property owned or leased by the consumer, without regard to interruptions in contiguity caused by easements, public thoroughfares, transportation rights-of-way, or utility rights-of-way.

(3) For the purposes of articles 1 to 7 of this title, a motor carrier that provides transportation not subject to regulation pursuant to section 40-10.1-105 or that is subject to part 3, 4, or 5 of article 10.1 of this title is not a public utility.

(4) Repealed.

Source: L. 13: p. 465, § 3. C.L. § 2913. CSA: C. 137, § 3. CRS 53: § 115-1-3. L. 61: p. 627, § 1. C.R.S. 1963: § 115-1-3. L. 80: (3) added, p. 742, § 2, effective June 30. L. 83: (1) amended, p. 1547, § 1, effective May 25; (2) amended, p. 1572, § 2, effective July 1. L. 84: (1) amended, p. 1032, § 1, effective April 2; (3) amended, p. 1051, § 3, effective April 12. L. 85: (2)(b)(I) amended and (2)(b)(II) repealed, pp. 1301, 1303, §§ 1, 6, effective April 5; (1)(b)(IV) and (1)(b)(V) added, pp. 1293, 1294, §§ 1, 1, effective April 30; (3) amended, p. 1308, § 3, effective May 29. L. 86: (2)(b)(I) amended, p. 1161, § 2, effective May 27. L. 90: (4) added, p. 1811, § 2, effective June 7. L. 91: (3) amended, p. 1758, § 1, effective March 12. L. 95: (3) amended, p. 1209, § 22, effective May 31. L. 98: (1)(b)(III) amended, p. 845, § 4, effective May 26. L. 2003: (1)(b)(VI) added, p. 2592, § 3, effective June 5. L. 2008: (1)(a) amended, p. 1792, § 4, effective July 1. L. 2009: (2)(c) added, (SB 09-051), ch. 157, p. 678, § 10, effective September 1. L. 2011: (3) amended, (HB 11-1198), ch. 127, p. 418, § 12, effective August 10. L. 2012: (4) repealed, (HB 12-1258), ch. 147, p. 529, § 2, effective August 8.

Cross references: For constitutional provisions relating to exemption of municipally owned utilities, see article XXV of the Colorado Constitution; for the regulation of rates and charges by municipal utilities, see article 3.5 of this title.

ANNOTATION

- I. General Consideration.
- II. Public Utility Defined.
- III. Jurisdiction of Public Utilities Commission.
- IV. Cooperative Electric Associations.

I. GENERAL CONSIDERATION.

Law reviews. For article, "Coal Mining a Public Utility", see 12 Dicta 267 (1935). For article, "Extraterritorial Service of Municipally

Owned Water Works in Colorado", see 21 Rocky Mt. L. Rev. 56 (1948). For article, "Oil and Gas Financing Under the Uniform Commercial Code as Enacted in Colorado", see 43 Den. L. J. 129 (1966). For article, "Generation and Transmission Loan Policy Under the Rural Electrification Act", see 43 Den. L. J. 269 (1966). For article, "May Regulated Utilities Monopolize the Sun?", see 56 Den. L.J. 31 (1979). For article, "Utility Use of Renewable Resources: Legal and Economic Implications", see 59 Den.

L.J. 663 (1982). For article, "Retail Competition in the Electric Utility Industry", see 60 Den. L.J. 1 (1982). For comment, "Municipal Utilities in Colorado — Can They Charge Their Nonresident Customers More Than They Charge Their Resident Customers Just Because the Nonresident Lives on the Wrong Side of the Boundary?", see 60 U. Colo. L. Rev. 357 (1989).

Fact that telephone company is a regulated utility is not sufficient state action on which a former employee may base a claim for relief under 42 U.S.C. § 1983. *Hughes v. Mountain States Tel. and Tel. Co.*, 686 P.2d 814 (Colo. App. 1984).

Applied in *City of Loveland v. Pub. Utils. Comm'n*, 195 Colo. 298, 580 P.2d 381 (1978); *Pub. Serv. Co. v. Pub. Utils. Comm'n*, 644 P.2d 933 (Colo. 1982).

II. PUBLIC UTILITY DEFINED.

To fall into class of public utility, business or enterprise must be impressed with public interest and those engaged in the conduct thereof must hold themselves out as serving or ready to serve all members of the public, who may require it, to the extent of their capacity: The nature of the service must be such that all members of the public have an enforceable right to demand it. *City of Englewood v. City & County of Denver*, 123 Colo. 290, 229 P.2d 667 (1951); *Parrish v. Pub. Utils. Comm'n*, 134 Colo. 192, 301 P.2d 343 (1956); *Pub. Utils. Comm'n v. Colo. Interstate Gas Co.*, 142 Colo. 361, 351 P.2d 241 (1960); *Cady v. City of Arvada*, 31 Colo. App. 85, 499 P.2d 1203 (1972).

If operation is not impressed with public interest, that fact is readily determined by the fact that the public has no right to demand the service. *Pub. Utils. Comm'n v. Colo. Interstate Gas Co.*, 142 Colo. 361, 351 P.2d 241 (1960).

Service to public is controlling factor. *Pub. Utils. Comm'n v. Colo. Interstate Gas Co.*, 142 Colo. 361, 351 P.2d 241 (1960).

Intention and willingness to serve do not alone create utility status. One of the requirements for utility status is intention and willingness to serve: This qualification, standing alone, is not sufficient to endow a company with the protection of this title. *Pub. Serv. Co. v. Pub. Utils. Comm'n*, 142 Colo. 135, 350 P.2d 543, cert. denied, 364 U.S. 820, 81 S. Ct. 53, 5 L. Ed.2d 50 (1960).

Dedication of operation to public service can never be presumed, but must be supported by evidence of an unequivocal intention to make such dedication. *Parrish v. Pub. Utils. Comm'n*, 134 Colo. 192, 301 P.2d 343 (1956); *Pub. Utils. Comm'n v. Colo. Interstate Gas Co.*, 142 Colo. 361, 351 P.2d 241 (1960).

Appropriate test for determining public utility status is no longer common law "Englewood" test, but rather this section and other Colorado statutes and constitutional provisions. *Bd. of Cty. Comm'rs v. Denver Bd. of Water Comm'rs* 718 P.2d 235 (Colo. 1986).

Municipally owned public utility subject to regulation. A municipally owned public utility, as to service furnished consumers beyond its territorial jurisdiction, should be subject to the same regulation to which a privately owned public utility must conform in similar circumstances. *City & County of Denver v. Pub. Utils. Comm'n*, 181 Colo. 38, 507 P.2d 871 (1973).

"Public utility" is not applicable to chattel or other property used for benefit of public, but applies to a system of works operated for public use. *Searle v. Haxtun*, 84 Colo. 494, 271 P. 629 (1928).

Question whether corporation is public utility depends upon acts not powers. While power possessed by a corporation under its charter or general statutes may be inquired into to determine whether it is authorized to perform a public service, the question of whether it is or is not a public utility depends not upon its powers, but upon its acts. *Colo. Utils. Corp. v. Pub. Utils. Comm'n*, 99 Colo. 189, 61 P.2d 849 (1936); *Colorado-Ute Elec. Ass'n v. W. Colo. Power Co.*, 385 U.S. 22, 87 S. Ct. 230, 17 L. Ed.2d 21, reh'g denied, 385 U.S. 984, 87 S. Ct. 500, 17 L. Ed.2d 445 (1966).

General assembly has declared that "common carrier" is "public utility". *Miller Bros. v. Pub. Utils. Comm'n*, 185 Colo. 414, 525 P.2d 443 (1974).

Contract carriage has not been declared a "public utility". *Miller Bros. v. Pub. Utils. Comm'n*, 185 Colo. 414, 525 P.2d 443 (1974).

Contract carrier and public utility distinguished. A party who installs a water distribution system and contracts with a city to furnish water to such line at the city limit upon certain conditions, and who has no contract with any water user on said system, and who does not hold himself out to serve the public indiscriminately, is a contract carrier and not a public utility and not subject to the jurisdiction of the public utilities commission. *Parrish v. Pub. Utils. Comm'n*, 134 Colo. 192, 301 P.2d 343 (1956); *Miller Bros. v. Pub. Utils. Comm'n*, 185 Colo. 414, 525 P.2d 443 (1974); *Denver Cleanup Serv. Inc. v. Pub. Utils. Comm'n*, 195 Colo. 537, 561 P.2d 1252 (1977).

Smelting company may be public utility. A smelting company treating ores from various parts of the state is affected with a public interest. *Ohio & Colo. Smelting & Ref. Co. v. Pub. Utils. Comm'n*, 68 Colo. 137, 187 P. 1082 (1920).

Coal mining corporation held not public utility. A coal mining corporation not declared by law to be "affected with a public interest",

which contracted with a municipality to sell to it surplus electrical energy generated by it for use in its mining operations, such being its only sale, is not to be a public utility within the meaning of the public utilities act. *Colo. Utils. Corp. v. Pub. Utils. Comm'n*, 99 Colo. 189, 61 P.2d 849 (1936).

Supplier of natural gas not public utility simply because it exercises eminent domain. An interstate supplier of natural gas, supplying a limited number of industrial customers with fuel gas under contract, which obtains, from the federal power commission, certificates of public convenience and necessity for the purpose of exercising the right of eminent domain does not thereby become a public utility as defined by this section. *Pub. Utils. Comm'n v. Colo. Interstate Gas Co.*, 142 Colo. 361, 351 P.2d 241 (1960).

Sanitation district not public utility. A sanitation district organized pursuant to statute does not fall within the definition of a public utility. *Schlarb v. North Sub. San. Dist.*, 144 Colo. 590, 357 P.2d 647 (1960).

Water conservancy districts are not public utilities subject to the regulation of the public utilities commission. *Matthews v. Tri-County Water Conservancy Dist.*, 200 Colo. 202, 613 P.2d 889 (1980).

Motor carriers for hire, of whatever commodity, are public utilities. Consolidated Freightways Corps. v. Pub. Utils. Comm'n, 158 Colo. 239, 406 P.2d 83 (1965).

That common carriers do or do not compete with railroads is immaterial. *Greeley Transp. Co. v. People*, 79 Colo. 307, 245 P. 720 (1926).

The department of corrections is not a telephone corporation pursuant to this section and therefore not subject to review or regulation by the public utilities commission with respect to inmate telephone system. *Powell v. Colo. Pub. Utils. Comm'n*, 956 P.2d 608 (Colo. 1998).

III. JURISDICTION OF PUBLIC UTILITIES COMMISSION.

This section vests jurisdiction exclusively in public utilities commission over the adequacy, installation, and extension of the power services and the facilities necessary to supply, extend, and connect the same; and the district court only has jurisdiction to review the decisions of the public utilities commission in appropriate proceedings. *Intermountain Rural Elec. Ass'n v. District Court*, 160 Colo. 128, 414 P.2d 911 (1966).

Theory upon which structure of public utility commission powers is based is that of regulated monopoly. *Denver & R. G. W. R. R. v. Pub. Utils. Comm'n*, 142 Colo. 400, 351 P.2d 278 (1960); *Pub. Utils. Comm'n v. Verl Harvey, Inc.*, 150 Colo. 158, 371 P.2d 452 (1962);

Ephraim Freightways, Inc. v. Pub. Utils. Comm'n, 151 Colo. 596, 380 P.2d 228 (1963); *Colo. Transp. Co. v. Pub. Utils. Comm'n*, 158 Colo. 136, 405 P.2d 682 (1965).

General assembly has granted to P.U.C. very extensive and broad regulatory powers including the power to designate location of facilities and also relocation or removal thereof; in exercising any power, the interest of the public should always be given first and paramount consideration. *Pub. Serv. Co. v. Pub. Utils. Comm'n*, 142 Colo. 135, 350 P.2d 543, cert. denied, 364 U.S. 820, 81 S. Ct. 53, 5 L. Ed.2d 50 (1960).

As function of police power of state. The power to regulate entities affected with a public interest is a function of the police power of the state, and any business or activity which is affected with a public interest may be so classified and so regulated. *W. Colo. Power Co. v. Pub. Utils. Comm'n*, 159 Colo. 262, 411 P.2d 785, appeal dismissed, 385 U.S. 22, 87 S. Ct. 230, 17 L. Ed.2d 21, reh'g denied, 385 U.S. 984, 87 S. Ct. 500, 17 L. Ed.2d 445 (1966).

IV. COOPERATIVE ELECTRIC ASSOCIATIONS.

Subsection (2) constitutional. Subsection (2), which generally confers jurisdiction over cooperatives in the public utilities commission, does not violate the constitution of Colorado or of the United States. *W. Colo. Power Co. v. Pub. Utils. Comm'n*, 159 Colo. 262, 411 P.2d 785, appeal dismissed, 385 U.S. 22, 87 S. Ct. 230, 17 L. Ed.2d 21, reh'g denied, 385 U.S. 984, 87 S. Ct. 500, 17 L. Ed.2d 445 (1966).

Subsection (2) makes no exceptions: "Every cooperative electric association" is public utility, as well as all other electric suppliers. *W. Colo. Power Co. v. Pub. Utils. Comm'n*, 159 Colo. 262, 411 P.2d 785, appeal dismissed, 385 U.S. 22, 87 S. Ct. 230, 17 L. Ed.2d 21, reh'g denied, 385 U.S. 984, 87 S. Ct. 500, 17 L. Ed.2d 445 (1966); *Pub. Serv. Co. v. Pub. Utils. Comm'n*, 174 Colo. 470, 485 P.2d 123 (1971).

Service may affect so considerable a fraction of the public that it is public in the same sense in which any other may be called so. The public does not mean everybody all the time. *W. Colo. Power Co. v. Pub. Utils. Comm'n*, 159 Colo. 262, 411 P.2d 785, appeal dismissed, 385 U.S. 22, 87 S. Ct. 230, 17 L. Ed.2d 21, reh'g denied, 385 U.S. 984, 87 S. Ct. 500, 17 L. Ed.2d 445 (1966).

Legislative act did not purport to affect the contractual rights between cooperatives and their members which were created at a time when the cooperatives did not enjoy the status of public utilities, and thus a rural electric association may continue to serve all members who were receiving service prior to the effective date of its becoming a public utility, regardless of any

extensive certificates granted to others. W. Colo. Power Co. v. Pub. Utils. Comm'n, 163 Colo. 61, 428 P.2d 922 (1967).

Effect of subsection (2) is prospectively to establish electrical cooperatives as public utili-

ties and to give them a regulated monopoly status as of that date in those areas in which they were rendering service on an exclusive basis. W. Colo. Power Co. v. Pub. Utils. Comm'n, 163 Colo. 61, 428 P.2d 922 (1967).

40-1-103.3. Alternative fuel vehicles - definition. (1) As used in this section, "property or premises", with respect to an electric, natural gas, or liquefied petroleum gas extension or connection of service, includes alternative fuel vehicle charging and fueling facilities in addition to buildings and other improvements.

(2) For the purposes of articles 1 to 7 of this title, persons generating electricity for use in alternative fuel vehicle charging or fueling facilities as authorized by subsection (4) of this section, persons reselling electricity supplied by a public utility, or persons reselling compressed or liquefied natural gas, liquefied petroleum gas, or any component parts or by-products to governmental entities or to the public for use as fuel in alternative fuel vehicles or buying electricity stored in such vehicles for resale are not subject to regulation as a public utility. Electric and natural gas public utilities may provide the services described in this subsection (2) as unregulated services, and these unregulated services may not be subsidized by the regulated services of the electric or natural gas public utility.

(3) Owners or operators of property or premises containing an alternative fuel vehicle charging or fueling facility, or the owners or operators of the facility, shall purchase the electricity required for the facility from a public utility with the right to sell electricity to the property, premises, or facility except when the owners or operators of the property, premises, or facility generate electricity on the property or premises for use in alternative fuel vehicles as authorized by subsection (4) of this section.

(4) The owner or operator of a facility that generates electricity for use in alternative fuel vehicle charging or fueling facilities is not subject to regulation as a public utility, if:

(a) The electricity is generated on the property or premises where the charging or fueling facilities are located; and

(b) The electricity is generated from a renewable resource that:

(I) Qualifies as "retail distributed generation" as defined in section 40-2-124 (1) (a) (V), if located on the system of an entity subject to the requirements of section 40-2-124. The electric power requirements for the property pursuant to section 40-2-124 (1) include the demand for existing or proposed alternative fuel vehicle charging or fueling facilities in addition to buildings and other improvements.

(II) Complies with section 40-9.5-118, if located on the system of a cooperative electric association; or

(III) Complies with section 40-2-124 (7), if located on the system of a municipally owned utility.

(5) Sale of electricity or natural gas by a public utility to the owner or operator of an alternative fuel vehicle charging or fueling facility is a retail transaction.

(6) The regulated expenditures and investments made by a public utility to accommodate alternative fuel vehicle charging and fueling facilities are equal in priority to all other infrastructure necessary to serve any customer of the public utility in its service territory, but are subordinate to the safety and reliability obligations of the utility.

Source: L. 2012: Entire section added, (HB 12-1258), ch. 147, p. 530, § 3, effective August 8.

40-1-103.5. Limited exemption of master meter operators - conditions - rules.

(1) Upon its own motion or upon application by any person who purchases gas or electric service from a regulated public utility for the purpose of delivery of such service to end users whose aggregate usage is to be measured by a master meter or other composite measurement device, the commission may exempt such person from regulation of rates under the "Public Utilities Law", articles 1 to 7 of this title, as the commission deems appropriate, so long as all of the following conditions are met:

(a) Such person, referred to in this section as a “master meter operator” or “MMO”, does not charge the end users, as part of its billing for utility service, for any costs in addition to the actual cost billed to the MMO by the serving utility, including without limitation costs of construction, maintenance, financing, administration, metering, or billing for the utility distribution system owned by the MMO;

(b) If the MMO bills the end users separately for service, the sum of such billings does not exceed the amount billed to the MMO by the serving utility;

(c) If the MMO bills the end users separately for service, the MMO passes on to the end users any refunds, rebates, rate reductions, or similar adjustments it receives from the serving utility;

(d) Any other conditions deemed necessary by the commission.

(2) In passing on refunds, rebates, rate reductions, or similar adjustments to end users, the MMO shall notify its current end users, either by first-class mail with a certificate of mailing or by inclusion in any monthly or more frequent regular written communication, of such adjustments and inform the end users that they may claim the adjustments within ninety days after receipt of the notice. The MMO may retain any portion of such adjustments which rightfully belongs to the MMO. Upon the expiration of the ninety-day claims period, the MMO shall identify any such adjustments which are unclaimed and, if the aggregate amount unclaimed exceeds one hundred dollars, the MMO shall contribute such unclaimed amount to the fund established by the commission on low-income energy assistance pursuant to section 40-8.5-104.

(3) The commission shall adopt such rules as it deems necessary to implement this section.

Source: L. 93: Entire section added, p. 291, § 1, effective April 7.

40-1-104. Securities - issuance. (1) The term “securities”, when used in articles 1 to 7 of this title, includes stocks, bonds, notes, and other evidences of indebtedness.

(2) The power of every gas corporation and of every electrical corporation operating as a public utility as defined in section 40-1-103 that derives more than five percent of its consolidated gross revenues in the state of Colorado as a public utility, or derives a lesser percentage if said revenues are realized by supplying an amount of energy which equals five percent or more of this state’s consumption, to issue or assume securities and to create liens on its property situated within this state is a special privilege, hereby subjected to the supervision and control of the commission. Such public utility, when authorized by order of the commission and not otherwise, may issue or assume securities with a maturity date of more than twelve months after the date of issuance for the following purposes: The acquisition of property; the construction, completion, extension, or improvement of its facilities; the improvement or maintenance of its service; the discharge or lawful refunding of its obligations; the reimbursement of moneys actually expended for said purposes from income or from any other moneys in the treasury not secured by or obtained from the issue of securities within five years next prior to the filing of an application with the commission for the required authorization; or any of such purposes or any other lawful purpose authorized by the commission.

(3) Such public utility, by written petition filed with the commission setting forth the pertinent facts involved, shall make application to the commission for an order authorizing the proposed issue or assumption of securities and the application of the proceeds therefrom to the purpose specified. The commission, with or without a hearing and upon such notice as the commission may prescribe, shall enter its written order approving the petition and authorizing the proposed securities transactions unless the commission finds that such transactions are inconsistent with the public interest or that the purpose thereof is not permitted or is inconsistent with the provisions of this section.

(4) Such public utility may issue or renew, extend, or assume liability on securities, other than stocks, with a maturity date of not more than twelve months after the date of issuance and secured or unsecured, without application to or order of the commission; but no such securities so issued shall in whole or in part be refunded by any issue of securities

having a maturity of more than twelve months except on application to and approval of the commission.

(5) All applications for the issuance or assumption of securities shall be placed at the head of the commission's docket and shall be disposed of promptly, within thirty days after the petition is filed with the commission unless it is necessary for good cause to continue the same for a longer period. Whenever such application is continued beyond thirty days after the time it is filed, the commission shall enter an order making such continuance and stating fully the facts necessitating the continuance.

(6) No provision of this section nor any act or deed performed in connection therewith shall be construed to obligate the state of Colorado to pay or guarantee in any manner whatsoever any security authorized, issued, or assumed under the provisions of this section.

(7) All securities issued or assumed without application to and approval of the commission, except the securities mentioned in subsection (4) of this section, shall be void.

(8) The commission shall provide for a serial number or other device to be placed on the face of any such securities for the proper and easy identification thereof.

(9) Notwithstanding any provision of law to the contrary, the commission may approve a petition from a public utility proposing an investment in any of the following if the commission determines that such investment is not otherwise inconsistent with the public interest or that such investment is not otherwise inconsistent with this section:

(a) Any public-private initiative with the department of transportation, as defined in section 43-1-1201 (3), C.R.S.;

(b) Bonds issued for turnpikes in accordance with part 2 of article 3 of title 43, C.R.S.; or

(c) Repealed.

(d) Any other public-private initiative program for transportation system projects in Colorado authorized by law.

Source: L. 13: p. 465, § 3. C.L. § 2913. CSA: C. 137, § 3. L. 47: p. 701, § 1. CRS 53: § 115-1-4. C.R.S. 1963: § 115-1-4. L. 81: (2) amended, p. 1905, § 1, effective March 27; (3) amended, p. 1922, § 1, effective July 1. L. 98: (9) added, p. 446, § 7, effective August 5. L. 2000: (2), (3), (5), (6), and (7) amended, p. 131, § 1, effective August 2. L. 2005: (9)(c) repealed, p. 289, § 40, effective August 8.

Cross references: For the legislative declaration contained in the 1998 act amending this section, see section 1 of chapter 154, Session Laws of Colorado 1998.

ANNOTATION

Law reviews. For article, "Generation and Transmission Loan Policy Under the Rural Electrification Act", see 43 Den. L.J. 269 (1966).

ARTICLE 1.1

People Service Transportation

40-1.1-101.	Legislative declaration.		tions.
40-1.1-102.	Definitions.	40-1.1-105.	Insurance for volunteers.
40-1.1-103.	Classification of transportation.	40-1.1-106.	Safety and insurance regulation.
40-1.1-104.	Inapplicable laws and regula-		

40-1.1-101. Legislative declaration. In order to promote improved transportation for the elderly, for persons with disabilities, and for the residents of rural areas and small towns through an expanded and coordinated transportation network, the general assembly hereby declares it to be the policy of the state to legally define and to recognize people service transportation and volunteer transportation as separate but contributing components of the

transportation system. Therefore, it is the policy of the state to remove barriers to low-cost people service transportation and volunteer transportation. For this purpose, transportation systems meeting the criteria prescribed in this article will not be classified as public utilities or as any form of carrier subject to regulation by the commission but as people service transportation and volunteer transportation subject to appropriate regulation and administration.

Source: L. 81: Entire article added, p. 1907, § 1, effective July 1. L. 93: Entire section amended, p. 1671, § 89, effective July 1.

40-1.1-102. Definitions. As used in this article, unless the context otherwise requires:

(1) “Charitable organization” means any charitable unit primarily supported by private donation and not for profit, including but not limited to churches, civic groups, clubs, scout troops, or the American red cross.

(2) “Nonprofit” as applied to people service transportation or volunteer transportation means motor vehicle transportation provided for purposes other than for pecuniary gain, whether or not compensation is paid in connection with such transportation.

(3) “People service agency” means any people service unit primarily supported by public funds and not for profit, such as clinics, day care centers, job programs, congregate meal centers, senior citizen programs, and other government funded bodies.

(4) “People service organization” means a people service agency or a charitable organization.

(5) “People service transportation” means motor vehicle transportation provided on a nonprofit basis by a people service organization generally for the purpose of transporting clients or program beneficiaries in connection with people service programs sponsored by the organization, or by another people service organization. The motor vehicle may be owned, leased, borrowed, or contracted for use by the people service organization.

(6) “Volunteer transportation” means motor vehicle transportation provided on a nonprofit basis by an individual, company, firm, partnership, agency, or corporation under the direction, sponsorship, or supervision of a people service organization. The volunteers may receive an allowance to defray the expected cost of operating the vehicle but may not receive compensation for their time.

Source: L. 81: Entire article added, p. 1907, § 1, effective July 1.

40-1.1-103. Classification of transportation. People service transportation and volunteer transportation, as defined in section 40-1.1-102, shall be classified as such for purposes of regulation, insurance, and general administration.

Source: L. 81: Entire article added, p. 1908, § 1, effective July 1.

40-1.1-104. Inapplicable laws and regulations. (1) People service transportation and volunteer transportation shall not be considered transportation for compensation, commercial transportation, or any form of carrier. Thus, the following laws and regulations do not apply to motor vehicles while being used for the purpose of people service transportation or volunteer transportation:

- (a) Articles 1 and 2 to 9 of this title, concerning public utilities and common carriers;
- (b) Article 10.1 of this title, concerning motor carriers; and
- (c) and (d) (Deleted by amendment, L. 2011, (HB 11-1198), ch. 127, p. 419, § 13, effective August 10, 2011.)
- (e) Articles 20 to 33 of this title, concerning railroads.

Source: L. 81: Entire article added, p. 1908, § 1, effective July 1. L. 2011: IP(1), (1)(b), (1)(c), and (1)(d) amended, (HB 11-1198), ch. 127, p. 419, § 13, effective August 10.

40-1.1-105. Insurance for volunteers. People service agencies of the state or any political subdivision thereof are authorized to purchase insurance to cover volunteers when they provide volunteer transportation.

Source: L. 81: Entire article added, p. 1908, § 1, effective July 1.

40-1.1-106. Safety and insurance regulation. (1) The provisions of parts 2, 3, and 5 of article 4 of title 42, C.R.S., shall be applicable to motor vehicles used in people service transportation or volunteer transportation.

(2) Before a motor vehicle designed to transport more than sixteen passengers and used in people service transportation or volunteer transportation is operated or permitted to operate on any public highway of this state, the owner of such vehicle shall file with the department of revenue a certificate, in a form as approved by said department, evidencing a motor vehicle liability insurance policy issued by an insurance carrier or insurer authorized to do business in the state of Colorado or a surety bond issued by a company authorized to do a surety business in the state of Colorado with a minimum sum of fifty thousand dollars for damages to property of others, a minimum sum of one hundred thousand dollars for damages for or on account of bodily injury or death of one person as a result of any one accident, and, subject to such limit as to one person, a minimum sum of three hundred thousand dollars for or on account of bodily injury to or death of all persons as a result of any one accident.

(3) Any state agency which provides public funds to a people service agency may establish insurance and safety requirements which are in addition to and consistent with any other applicable insurance and safety requirements and which shall apply to people service transportation or volunteer transportation which it funds.

Source: L. 81: Entire article added, p. 1908, § 1, effective July 1. **L. 94:** (1) amended, p. 2570, § 92, effective January 1, 1995.

ARTICLE 2

Public Utilities Commission - Renewable Energy Standard

40-2-101.	Creation - appointment - term - subject to termination - repeal of article.	40-2-113.	Collection of fees - limitation.
40-2-102.	Oath - qualifications.	40-2-114.	Disposition of fees collected.
40-2-103.	Director - duties.	40-2-115.	Cooperation with other states and with the United States.
40-2-104.	Assistants and employees.	40-2-116.	Motor carriers - motor vehicle carriers exempt from regula- tion as public utilities - safety regulations. (Re- pealed)
40-2-105.	Office - sessions - seal - sup- plies.	40-2-117.	Legislative declaration - com- mission to conduct review of rate structures. (Re- pealed)
40-2-106.	Reports and decisions of the commission.	40-2-118.	Comprehensive energy report. (Repealed)
40-2-107.	Compensation and expenses of employees.	40-2-119.	Exemption of rail carrier transportation.
40-2-108.	Rules.	40-2-120.	Rail transportation policy.
40-2-109.	Report to executive director of the department of reve- nue.	40-2-121.	Transportation of natural gas report - legislative declara- tion. (Repealed)
40-2-109.5.	Incentives for distributed gen- eration - definition.	40-2-122.	Natural gas - deregulation of supply - voluntary separa- tion of service offerings -
40-2-110.	Appropriation and fees.		
40-2-110.5.	Annual fees - motor carriers - public utilities commission motor carrier fund - created.		
40-2-111.	Report of utilities to depart- ment of revenue.		
40-2-112.	Computation of fees.		

	consumer protection - legislative declaration.		plans - approval - cost recovery.
40-2-123.	New energy technologies - consideration by commission - incentives - demonstration projects - definitions - legislative declaration - repeal.	40-2-127.	Community energy funds - community solar gardens - definitions - rules - legislative declaration - repeal.
40-2-124.	Renewable energy standard - definitions - net metering - legislative declaration.	40-2-128.	Solar photovoltaic installations - supervision by certified practitioners - qualifications of electrical contractors.
40-2-125.	Eminent domain restrictions.	40-2-129.	New resource acquisitions - factors in determination - local employment - "best value" metrics.
40-2-126.	Transmission facilities - biennial review - energy resource zones - definitions -		

40-2-101. Creation - appointment - term - subject to termination - repeal of article.

(1) A public utilities commission is hereby created, which shall be known as the public utilities commission of the state of Colorado, to consist of three members who shall be appointed by the governor with the consent of the senate. Persons holding office on July 1, 1993, shall continue to serve in such office, but the term of one of these persons shall expire on the Monday preceding the second Tuesday of January, 1995, of another, the Monday preceding the second Tuesday of January, 1996, and of the third, the Monday preceding the second Tuesday of January, 1997, all as the governor shall designate; except that such designation shall not result in the extension of the term of any member to more than four years' duration. Thereafter, appointments shall be made for terms of four years.

(2) No more than two members of the public utilities commission shall be affiliated with the same political party, and any appointment to fill a vacancy shall be for the unexpired term. Each commissioner shall be a qualified elector of this state. The governor shall designate one member of the commission as chair of the commission. The commissioners shall devote their entire time to the duties of their office to the exclusion of any other employment and shall receive such compensation as is designated by law. A majority of the commission shall constitute a quorum for the transaction of its business.

(3) (a) The provisions of section 24-34-104, C.R.S., concerning the termination schedule for regulatory bodies of the state unless extended as provided in that section, are applicable to the public utilities commission created by this section.

(b) (I) This article is repealed, effective July 1, 2019.

(II) Prior to its repeal, the public utilities commission shall be reviewed as provided for in section 24-34-104, C.R.S.

Source: L. 13: p. 465, § 4. C.L. § 2915. CSA: C. 137, § 5. CRS 53: § 115-2-1. C.R.S. 1963: § 115-2-1. L. 69: p. 928, § 2. L. 76: (3) added, p. 627, § 40, effective July 1. L. 87: (1) amended, p. 914, § 31, effective June 15. L. 91: (3) amended, p. 691, § 71, effective April 20. L. 93: (1) and (3)(b) amended, p. 2057, § 4, effective July 1. L. 98: (3)(b) amended, p. 404, § 1, effective July 1. L. 2003: (3)(b) amended, p. 731, § 3, effective March 20; (2) amended, p. 1698, § 1, effective May 14. L. 2008: (3)(b)(I) amended, p. 1791, § 1, effective July 1.

Cross references: For salaries of commissioners, see § 24-9-102; for the powers and duties of the public utilities commission in regard to motor vehicle carriers, see article 10 of this title.

ANNOTATION

Law reviews. For article, "Trying to Get the P.U.C. to Let You Run a Truck", see 7 Dicta 4 (1930). For article, "May Regulated Utilities Monopolize the Sun?", see 56 Den. L.J. 31 (1979).

Powers wholly statutory. The public utilities commission derives its authority wholly from constitutional and statutory provisions and possesses only such powers as are thereby conferred. *Snell v. Pub. Utils. Comm'n*, 108 Colo.

162, 114 P.2d 563 (1941).

The commission has exclusive regulatory powers over all public utilities. *Denver & S. Pac. Ry. v. City of Englewood*, 62 Colo. 229, 161 P. 151, (1916), appeal dismissed, 248 U.S. 294, 39 S. Ct. 100, 63 L. Ed. 253 (1919); *Highland Utils. Co. v. Pub. Utils. Comm'n*, 97 Colo. 1, 46 P.2d 80 (1935).

Commission determines whether or not public utility shall continue service to public. The power to ascertain and determine whether or not a public utility should or should not continue service to the public is possessed solely by the public utilities commission, subject to review by the courts of the action of the commission. *Highland Utils. Co. v. Pub. Utils. Comm'n*, 97 Colo. 1, 46 P.2d 80 (1935).

Public utility acting as such thereby agrees to regulation. When a public utility or body assumes to act as such it thereby in legal effect agrees to have its business regulated by public authority. *Pirie v. Pub. Utils. Comm'n*, 72 Colo. 65, 209 P. 640 (1922); *Highland Utils. Co. v. Pub. Utils. Comm'n*, 97 Colo. 1, 46 P.2d 80 (1935).

No authority to impose monetary fines. The constitutional and statutory provisions which have created the commission and defined its powers do not authorize it to impose monetary fines. *Haney v. Pub. Utils. Comm'n*, 194 Colo. 481, 574 P.2d 863 (1978).

40-2-102. Oath - qualifications. Each commissioner, before entering upon the duties of his office, shall take the constitutional oath of office. No person in the employ of or holding any official relation to any corporation or person, which said corporation or person is subject in whole or in part to regulation by the commission, and no person owning stocks or bonds of any such corporation or who is in any manner pecuniarily interested therein shall be appointed to or hold the office of commissioner or be appointed or employed by the commission; but if any such person becomes the owner of such stocks or bonds or becomes pecuniarily interested in such corporation otherwise than voluntarily, he shall divest himself of such ownership or interest within six months; failing to do so, his office or employment shall become vacant.

Source: L. 13: p. 466, § 5. C.L. § 2916. CSA: C. 137, § 6. CRS 53: § 115-2-2. C.R.S. 1963: § 115-2-2. L. 69: p. 928, § 3.

Cross references: For the oath of office, see § 8 of article XII of the Colorado Constitution.

40-2-103. Director - duties. The executive director of the department of regulatory agencies, pursuant to section 13 of article XII of the state constitution, and with the approval of the commission, shall appoint a director of the commission. The director of the agency shall manage the operations of the agency in order to carry out the public utilities law, to carry out and implement policies, procedures, and decisions made by the commission, as defined in section 40-2-101 (1), and to meet the requirements of the commission concerning any matters within the authority of an agency transferred by a **type 1** transfer, as defined in section 24-1-105, C.R.S., and which are under the jurisdiction of the commission. The director shall have all the powers and responsibilities of the division director for this purpose, including the power to issue all necessary process, writs, warrants, and notices. The director shall have the requisite power to serve warrants and other process in any county or city and county of this state and to delegate such actions to duly authorized employees or agents of the agency as appropriate.

Source: L. 13: p. 466, § 6. C.L. § 2917. CSA: C. 137, § 7. CRS 53: § 115-2-3. C.R.S. 1963: § 115-2-3. L. 69: p. 928, § 4. L. 89: Entire section amended, p. 1524, § 2, effective April 12. L. 93: Entire section amended, p. 2057, § 5, effective July 1.

40-2-104. Assistants and employees. (1) The director of the commission may appoint such experts, engineers, statisticians, accountants, investigative personnel, clerks, and other employees as are necessary to carry out the provisions of this title or to perform the duties and exercise the powers conferred by law upon the commission.

(2) (Deleted by amendment, L. 93, p. 2058, § 6, effective July 1, 1993.)

(3) The director of the commission shall hire and designate employees of the commission as administrative law judges who shall have the power to administer oaths, examine witnesses, receive evidence, and conduct hearings, investigations, and other proceedings on behalf of the commission.

Source: L. 13: p. 466, § 7. C.L. § 2918. CSA: C. 137, § 8. CRS 53: § 115-2-4. C.R.S. 1963: § 115-2-4. L. 69: p. 928, § 5. L. 89: (1) and (3) amended, p. 1524, § 3, effective April 12. L. 93: Entire section amended, p. 2058, § 6, effective July 1.

ANNOTATION

Formal complaint not required to initiate investigation. The public utilities commission has broad investigatory powers authorizing it to

conduct an investigation without the formality of a written complaint. *Eddie's Leaf Spring v. PUC*, 218 P.3d 326 (Colo. 2009).

40-2-105. Office - sessions - seal - supplies. (1) The office of the commission shall be in the city and county of Denver. The office shall be open every day, legal holidays, Saturdays, and Sundays excepted. Hearings under this title may be held in such places within this state as shall be determined by the commission. It is the duty of the office of state planning and budgeting to provide suitable quarters for the commission and its employees.

(2) The commission shall have a seal bearing the following inscription: "The public utilities commission of the state of Colorado". The seal shall be affixed to all writs and authentications of copies of records and to such other instruments as the commission shall direct. All courts shall take judicial notice of said seal.

(3) Necessary expenses of the commission shall be paid from appropriations made by the general assembly to the commission.

Source: L. 13: p. 467, § 8. C.L. § 2919. CSA: C. 137, § 9. CRS 53: § 115-2-5. C.R.S. 1963: § 115-2-5. L. 69: p. 929, § 6. L. 75: (1) amended, p. 821, § 18, effective July 18. L. 89: (1) amended, p. 1525, § 4, effective April 12.

Cross references: For legal holidays, see article 11 of title 24; for payment of expenses, see § 40-2-107.

40-2-106. Reports and decisions of the commission. Whenever an investigation is made, a hearing is held, or a decision is entered by the commission, it is the duty of the commission to make a report or decision in writing in respect thereto which shall state its findings of fact and conclusions thereon, together with its decision or requirement in the premises. All such reports and decisions shall be entered of record and a copy thereof shall be furnished to all parties to the proceedings and to such other persons as the commission may deem advisable.

Source: L. 13: p. 467, § 9. C.L. § 2920. CSA: C. 137, § 10. L. 45: p. 525, § 1. CRS 53: § 115-2-6. C.R.S. 1963: § 115-2-6. L. 69: p. 929, § 7.

ANNOTATION

Commission is primarily fact-finding body and has few, if any, of the attributes of an appellate court: It is required by law to make findings of fact upon which any necessary judicial review of its actions can be predicated. *W.*

Colo. Power Co. v. Pub. Utils. Comm'n, 159 Colo. 262, 411 P.2d 785, appeal dismissed, 385 U.S. 22, 87 S. Ct. 230, 17 L. Ed.2d 21, reh'g denied, 385 U.S. 984, 87 S. Ct. 500, 17 L. Ed.2d 445 (1966).

40-2-107. Compensation and expenses of employees. (1) All employees of the commission shall receive such compensation as may be fixed pursuant to law.

(2) Repealed.

(3) All expenses incurred by the commission pursuant to the provisions of this title, including the actual and necessary traveling expenses and other expenses and disbursements of the commissioners, their officers, and employees shall be paid by the controller from the funds appropriated for the use of the commission upon vouchers of the commission therefor.

Source: L. 13: p. 468, § 10. C.L. § 2921. CSA: C. 137, § 11. CRS 53: § 115-2-7. C.R.S. 1963: § 115-2-7. L. 69: p. 930, § 8. L. 89: (3) amended, p. 1525, § 5, effective April 12. L. 93: (2) repealed, p. 2058, § 7, effective July 1.

Cross references: For appropriations, see part 1 of article 75 of title 24.

40-2-108. Rules. (1) The commission shall promulgate such rules as are necessary for the proper administration and enforcement of this title and shall furnish, without charge, copies of the appropriate rules to each public utility under its jurisdiction and, upon request, to any public officer, agency, political subdivision, association of officers, agencies, or political subdivisions and to any representative of twenty-five or more consumers. The commission shall be governed by the provisions of article 4 of title 24, C.R.S., for the promulgation and adoption of rules; except that, notwithstanding any provision of the said article 4 of title 24, C.R.S., to the contrary, the commission shall issue a decision whenever it adopts rules in accordance with this section.

(2) Notwithstanding section 24-4-103 (6), C.R.S., any temporary or emergency rule adopted by the commission shall be effective until a permanent rule that replaces the temporary or emergency rule is effective but not for more than two hundred ten days after the date of adoption.

Source: L. 13: p. 468, § 12. C.L. § 2923. CSA: C. 137, § 13. CRS 53: § 115-2-9. C.R.S. 1963: § 115-2-9. L. 64: p. 166, § 124. L. 69: p. 930, § 9. L. 89: Entire section amended, p. 1525, § 6, effective April 12. L. 93: Entire section amended, p. 2058, § 8, effective July 1. L. 95: Entire section amended, p. 232, § 1, effective April 17.

Cross references: For rule-making procedures, see article 4 of title 24.

ANNOTATION

Due process granted by rule governing discontinuance of service. Procedural safeguards effected by a public utility rule governing discontinuance of service were adequate to protect the interests involved and were consistent with the provisions of the due process clause of the

fourteenth amendment and § 25 of art. II, Colo. Const. *Denver Welfare Rights Org. v. Pub. Utils. Comm'n*, 190 Colo. 329, 547 P.2d 239 (1976).

Regulations promulgated under this section upheld. *Pollard Contracting Co. v. Pub. Utils. Comm'n*, 644 P.2d 7 (Colo. 1982).

40-2-109. Report to executive director of the department of revenue. On March 1 of each year, the public utilities commission shall furnish the executive director of the department of revenue with a list of those public utilities subject to its jurisdiction, supervision, and regulation on January 1 of each year, excepting those motor carriers subject to the passenger-mile tax imposed by sections 42-3-304 to 42-3-306, C.R.S., but only so long as the cost of regulation of such motor carriers is defrayed from the proceeds of such passenger-mile tax.

Source: L. 55: p. 695, § 1. CRS 53: § 115-2-10. C.R.S. 1963: § 115-2-10. L. 89: Entire section amended, p. 1597, § 14, effective January 1, 1990. L. 94: Entire section amended, p. 2570, § 93, effective January 1, 1995. L. 2005: Entire section amended, p. 1184, § 37, effective August 8. L. 2011: Entire section amended, (HB 11-1198), ch. 127, p. 419, § 14, effective August 10.

40-2-109.5. Incentives for distributed generation - definition. (1) The commission shall develop a policy to establish incentives for consumers who produce distributed

generation, including, but not limited to, small wind turbines, thermal biomass, electric biomass, and solar thermal energy. The commission shall consider whether a credit program similar to the renewable energy standard set forth in section 40-2-124 would work for consumers who produce distributed generation. The commission shall present the policy and findings regarding a credit program to the house of representatives transportation and energy committee and the senate agriculture, natural resources, and energy committee, or their successor committees.

(2) As used in this section, "distributed generation" means a system by which a consumer generates heat or electricity using renewable energy resources for his or her own needs and may also send surplus electrical power back into the power grid.

(3) Effective January 1, 2012, all photovoltaic installations funded wholly or partially through financial incentives under this section shall be subject to the requirements set forth in section 40-2-128.

Source: L. 2007: Entire section added, p. 1761, § 7, effective June 1. L. 2010: (3) added, (HB 10-1001), ch. 37, p. 154, § 7, effective August 11.

40-2-110. Appropriation and fees. (1) At each regular session, the general assembly shall determine the amounts to be expended by the public utilities commission for its administrative expenses in supervising and regulating the public utilities which are under its jurisdiction, a list of which the commission is required by section 40-2-109 to furnish to the department of revenue, and shall appropriate to the public utilities commission from the public utilities commission fixed utility fund, established in section 40-2-114, the full amount so determined, and such amount shall be defrayed out of the fees to be paid by such public utilities, as provided in section 40-2-112.

(2) (a) (I) At each regular session, the general assembly shall determine the amounts to be expended by the public utilities commission for its administrative expenses in the supervision and regulation of motor carriers as provided by law and shall appropriate such amounts from the public utilities commission motor carrier fund established in section 40-2-110.5 as are necessary to be expended by the commission to accomplish said purposes.

(II) Repealed.

(b) Repealed.

Source: L. 55: p. 695, § 1. CRS 53: § 115-2-11. L. 57: p. 599, § 1. C.R.S. 1963: § 115-2-11. L. 69: p. 930, § 10. L. 82: (2) amended, p. 584, § 1, effective July 1. L. 85: (2)(a)(II) and (2)(b)(II) amended, p. 1295, § 1, effective July 1. L. 88: (2)(a)(I) amended and (2)(a)(II) and (2)(b) repealed, pp. 1351, 1352, §§ 1, 3, effective July 1.

40-2-110.5. Annual fees - motor carriers - public utilities commission motor carrier fund - created.

(1) (Deleted by amendment, L. 2011, (HB 11-1198), ch. 127, p. 419, § 15, effective August 10, 2011.)

(2) (a) (Deleted by amendment, L. 2003, p. 2380, § 2, effective August 6, 2003.)

(b) to (e) (Deleted by amendment, L. 93, p. 2059, § 9, effective July 1, 1993.)

(2.5) (Deleted by amendment, L. 2005, p. 31, § 1, effective August 8, 2005.)

(3) Repealed.

(4) and (5) (Deleted by amendment, L. 2011, (HB 11-1198), ch. 127, p. 419, § 15, effective August 10, 2011.)

(6) The public utilities commission motor carrier fund is hereby created in the state treasurer's office. The moneys in the fund shall be subject to annual appropriation by the general assembly for the purposes specified in section 40-2-110 (2) (a) (I). Any unexpended balance remaining in said fund at the end of any fiscal year shall remain in the fund.

(6.5) and (7) Repealed.

(8) Notwithstanding the amount specified for any fee in section 40-10.1-111, the commission by rule or as otherwise provided by law may reduce the amount of one or more of the fees if necessary pursuant to section 24-75-402 (3), C.R.S., to reduce the uncom-

mitted reserves of the fund to which all or any portion of one or more of the fees is credited. After the uncommitted reserves of the fund are sufficiently reduced, the commission by rule or as otherwise provided by law may increase the amount of one or more of the fees as provided in section 24-75-402 (4), C.R.S.

(9) (a) For the 2006-07 fiscal year and for each fiscal year thereafter, if the amount of uncommitted reserves in the motor carrier fund at the conclusion of any given fiscal year exceeds ten percent of the fund's expenditures during that fiscal year, the amount of the excess that is attributable to revenues received from any motor carrier, motor private carrier, broker, freight forwarder, leasing company, or any other person required to register with the United States department of transportation under the unified carrier registration system as authorized by federal law and as provided for in section 40-10.5-102 shall be transferred to the hazardous materials safety fund created in section 42-20-107, C.R.S., and the nuclear materials transportation fund created in section 42-20-511, C.R.S., proportional to the existing balances of those funds.

(b) The distribution required by paragraph (a) of this subsection (9) is in lieu of, and shall supersede, any provision to the contrary in section 24-75-402, C.R.S.

Source: L. 82: Entire section added, p. 585, § 2, effective July 1. L. 83: (1) and (2) amended and (2.5) added, p. 1548, § 1, effective June 1; (2.5) amended, p. 2056, § 38, effective October 14. L. 84: (2) amended, p. 1034, § 1, effective April 2; (1) and (2) amended, p. 1051, § 4, effective April 12. L. 85: (1) amended, p. 1308, § 4, effective May 29; (7) amended, p. 1295, § 2, effective July 1. L. 88: (3) and (6) amended and (7) repealed, pp. 1351, 1352, §§ 2, 3, effective July 1; (3) repealed, p. 1351, § 2, effective July 1, 1989. L. 93: (2) and (4) amended, p. 2059, § 9, effective July 1. L. 95: (1) amended, p. 1211, § 27, effective May 31. L. 98: (8) added, p. 1348, § 86, effective June 1. L. 2003: (6.5) added, p. 458, § 20, effective March 5; (1) and (2)(a) amended, p. 2380, § 2, effective August 6. L. 2005: (1) and (2.5) amended, p. 31, § 1, effective August 8. L. 2006: (6.5) repealed and (9) added, pp. 1102, 1094, §§ 24, 4, effective August 7. L. 2008: (1) amended, p. 1792, § 5, effective July 1. L. 2009: (1) and (4) amended, (SB 09-292), ch. 369, p. 1981, § 119, effective August 5. L. 2011: (1), (4), (5), and (8) amended, (HB 11-1198), ch. 127, p. 419, § 15, effective August 10.

Editor's note: Amendments to subsection (2) by Senate Bill 84-85 and House Bill 84-1252 were harmonized.

40-2-111. Report of utilities to department of revenue. Each public utility required to pay such fees shall, on or before May 15 of each year, file a return with the department of revenue on such forms as shall be prescribed by the executive director of the department of revenue and the public utilities commission setting forth the gross operating revenues of such public utility from intrastate utility business only transacted in the state of Colorado during the preceding calendar year. Such return shall be executed and verified by two of the executive officers of the utility making the return and shall contain or be verified by a written declaration that it is made under the penalties of perjury in the second degree, and any officer who knowingly and willfully makes and signs a false return is guilty of perjury in the second degree.

Source: L. 55: p. 166, § 1. CRS 53: § 115-2-12. C.R.S. 1963: § 115-2-12. L. 69: p. 964, § 75. L. 72: p. 565, § 39.

Cross references: For perjury in the second degree, see § 18-8-503.

40-2-112. Computation of fees. (1) On or before June 1 of each year, the executive director of the department of revenue shall ascertain the aggregate amount of gross operating revenues of all public utilities filing returns as provided in section 40-2-111. The executive director shall then compute the percentage which the full amount determined by the general assembly for administrative expenses of the public utilities commission for the

supervision and regulation of such public utilities is of the aggregate amount of gross operating revenues of such public utilities derived from intrastate utility business transacted during the preceding calendar year, and the percentage so computed shall be the basis upon which fees for the ensuing year shall be fixed.

(2) In recognition of the fact that nonprofit generation and transmission electric corporations or associations may be subject to less regulation and to no rate regulation by the commission, the executive director of the department of revenue shall disregard any revenues reported by such entities in making the computations required under subsection (1) of this section. In addition, the executive director of the department of revenue shall, in consultation with the director of the commission, enter into an agreement with each nonprofit generation and transmission electric corporation or association whereby such entity agrees to pay an amount equal to the administrative expenses reasonably anticipated to be incurred by the commission for the regulation of such entity. Said agreement shall be made by May 1 of the year in which it is to become effective and shall remain effective for not less than two and not more than five years. In the event that the anticipated amount set forth in the agreement proves to be substantially higher or lower than the commission's actual expenses incurred, the agreement for the next following year or years shall be adjusted so as to take such fact into account. If no such agreement is made as provided in this subsection (2), the commission, on its own motion or upon application by the executive director of the department of revenue or by such entity, shall set the matter for hearing and determine the amount to be paid by the entity. Amounts paid under agreements as contemplated by this subsection (2) or by order of the commission shall be used to reduce amounts paid by other utilities under subsection (1) of this section.

Source: L. 55: p. 696, § 1. CRS 53: § 115-2-13. L. 57: p. 599, § 1. C.R.S. 1963: § 115-2-13. L. 93: Entire section amended, p. 2060, § 10, effective July 1.

40-2-113. Collection of fees - limitation. On or before June 15 of each year, the department of revenue shall notify each public utility subject to the provisions of this article of the amount of its fee for the ensuing fiscal year beginning July 1, computed by multiplying its gross intrastate utility operating revenues for the preceding calendar year, as set forth in its return filed for such purpose, by the percentage determined in accordance with section 40-2-112; but no public utility shall be required to pay a fee in excess of one-fifth of one percent of its gross intrastate utility operating revenues for the preceding calendar year. Such fee shall be paid to the department of revenue in equal quarterly installments on or before July 15, October 15, January 15, and April 15 in each fiscal year. If payment is not made on or before said dates, there shall be added as a penalty ten percent of the installment due, together with interest at the rate of one percent per month on the amount of the unpaid installment until such time as the full amount of the installment, penalty, and interest has been paid. Upon failure, refusal, or neglect of any public utility to pay such fee, or any penalty or interest, the attorney general shall bring suit in the name of the state to collect the same.

Source: L. 55: p. 696, § 1. CRS 53: § 115-2-14. C.R.S. 1963: § 115-2-14.

40-2-114. Disposition of fees collected. All fees collected under section 40-2-113 by the department of revenue shall be remitted to the state treasurer and credited by him as follows: Three percent to the general fund and ninety-seven percent to the public utilities commission fixed utility fund, which fund is hereby created and shall be expended only to defray the full amount determined by the general assembly for the administrative expenses of the commission for the supervision and regulation of the public utilities paying such fees and for the financing of the office of consumer counsel created in article 6.5 of this title. Any unexpended balance remaining in said fund at the end of any fiscal year shall be retained by the state treasurer to defray such administrative expenses of the commission during subsequent fiscal years, and the executive director of the department of revenue shall take any such unexpended balance into account when computing the percentage upon which fees for the ensuing fiscal year shall be based.

Source: L. 55: p. 697, § 1. CRS 53: § 115-2-15. L. 57: p. 600, § 1. C.R.S. 1963: § 115-2-15. L. 64: p. 654, § 10. L. 69: p. 930, § 11. L. 84: Entire section amended, p. 1047, § 4, effective July 1.

40-2-115. Cooperation with other states and with the United States. (1) The commission is authorized to confer with or hold joint hearings with the authorities of any state or any agency of the United States in connection with any matter arising in proceedings under this title, under the laws of any state, or under the laws of the United States; to avail itself of the cooperation, services, records, and facilities of authorities of this state, any other state, or any agency of the United States as may be practicable in the enforcement or administration of the provisions of this title; and to enter into cooperative agreements with the various states and with any agency of the United States to enforce the economic and safety laws and rules of this state and of the United States. The commission is authorized to provide for the exchange of information concerning the enforcement of the economic and safety laws and rules of this state, any other state, and the United States relating to public utilities or to safety of transportation of gas by any person including a municipality; and, in particular, the commission may enforce the rules of the United States department of transportation concerning pipeline safety drug testing promulgated under the federal "Natural Gas Pipeline Safety Act", 49 U.S.C. sec. 60101 et seq., and may adopt such rules as are necessary and proper to comply with federal requirements under said act.

(1.5) The commission is authorized to adopt such rules as may be necessary to enforce and administer, in cooperation with the United States department of transportation, the provisions of the "Natural Gas Pipeline Safety Act", 49 U.S.C. sec. 60101 et seq., for the purpose of gas pipeline safety. Such rules shall apply to all public utilities and all municipal or quasi-municipal corporations transporting natural gas or providing natural gas service, all operators of master meter systems, as defined in 49 CFR 191.3, and all operators of pipelines transporting gas in intrastate commerce.

(2) As used in this section:

(a) "Transportation of gas" means the gathering, transmission, or distribution of gas by pipeline or its storage as defined in 49 CFR 192.3.

(b) "Gas" means natural gas, flammable gas, or gas which is toxic or corrosive.

(c) "Manufacturing goods" does not include farming or activities associated with the production of oil or natural gas.

Source: L. 55: p. 697, § 1. CRS 53: § 115-2-16. L. 57: p. 600, § 1. C.R.S. 1963: § 115-2-16. L. 69: p. 931, § 12. L. 71: p. 1098, § 1. L. 89: (1) amended, p. 1526, § 7, effective April 12. L. 93: Entire section amended, p. 2061, § 11, effective July 1. L. 2000: (1) and (1.5) amended, p. 1868, § 95, effective August 2. L. 2003: (1), (1.5), and (2)(a) amended, p. 1699, § 5, effective May 14.

40-2-116. Motor carriers - motor vehicle carriers exempt from regulation as public utilities - safety regulations. (Repealed)

Source: L. 69: p. 931, § 13. C.R.S. 1963: § 115-2-17. L. 78: Entire section amended, p. 518, § 1, effective July 1. L. 85: Entire section amended, p. 1308, § 5, effective May 29. L. 96: Entire section amended, p. 1546, § 2, effective July 1. L. 2003: (1) amended, p. 2381, § 5, effective August 6. L. 2010: (1) amended, (HB 10-1167), ch. 125, p. 415, § 1, effective April 15. L. 2011: Entire section repealed, (HB 11-1198), ch. 127, p. 416, § 3, effective August 10.

40-2-117. Legislative declaration - commission to conduct review of rate structures. (Repealed)

Source: L. 77: Entire section added, p. 1856, § 1, effective July 1.

Editor's note: Subsection (7) provided for the repeal of this section, effective July 1, 1979. (See L. 77, p. 1856.)

40-2-118. Comprehensive energy report. (Repealed)

Source: L. 79: Entire section added, p. 1510, § 1, effective June 22.

Editor's note: Subsection (6) provided for the repeal of this section, effective March 1, 1984. (See L. 79, p. 1510.)

40-2-119. Exemption of rail carrier transportation. (1) The commission shall by rule or regulation establish standards and procedures to be used in determining whether certain transportation provided by a rail carrier in this state should be exempted, in whole or in part, from one or more provisions of this title. Such rules and regulations shall provide for such exemption when the commission finds that:

(a) Jurisdiction, regulation, and control by the commission are not necessary to carry out the transportation policy of this title; and

(b) Either the transaction or service is of limited scope or the application of a provision of this title is not needed to protect shippers from the abuse of market power.

Source: L. 84: Entire section added, p. 1036, § 1, effective July 1.

40-2-120. Rail transportation policy. In regulating rail carriers, the state of Colorado hereby adopts the rail transportation policy of 49 U.S.C. sec. 10101; except that the references therein to the United States government and its agencies shall refer to the state of Colorado and its agencies.

Source: L. 84: Entire section added, p. 1036, § 1, effective July 1. L. 2001: Entire section amended, p. 1281, § 59, effective June 5.

40-2-121. Transportation of natural gas report - legislative declaration. (Repealed)

Source: L. 96: Entire section added, p. 985, § 1, effective May 23.

Editor's note: Subsection (3) provided for the repeal of this section, effective July 1, 1998. (See L. 96, p. 985.)

40-2-122. Natural gas - deregulation of supply - voluntary separation of service offerings - consumer protection - legislative declaration. (1) The general assembly finds, determines, and declares that natural gas service is essential to the health and well-being of all Colorado natural gas customers. The general assembly further finds, determines, and declares that natural gas is traded in competitive markets at the wellhead and in downstream markets for sale to utilities, industrial customers, and large commercial customers and there may be the potential for natural gas also to be traded competitively for sale to all other classes of consumers. As a result, it may be predicted that competition in the natural gas supply market may increase the choices available to consumers and reduce the price of such service. Accordingly, it is the policy of the state of Colorado to encourage competition after a reasonable transition period during which consumers are educated about choices in natural gas supply that are now available or will be available in the future. The commission is authorized to approve voluntary plans consistent with this section that separate the sale of natural gas to retail customers into natural gas delivery and natural gas supply and, after a transition period, deregulate the charge for natural gas supply where the commission finds that the plan provides customers with adequate choices, ensures the provision of reliable natural gas supply on a fallback basis on terms and conditions that are just and reasonable to all customers, promotes the development of a competitive market for gas supply, limits the unreasonable exercise of market power, and retains and enhances programs to support low-income consumers.

(2) (a) Natural gas public utilities shall continue to be regulated with respect to their delivery functions and shall be required to continue to offer nondiscriminatory natural gas

delivery services over their pipeline systems so that Colorado natural gas consumers, both individually and on an aggregated basis, shall have ready access to natural gas supply from among competing sources.

(b) Any natural gas public utility providing for individual consumer choice between competing suppliers shall implement a separately stated distribution charge, applicable to all customers regardless of the identity of the natural gas supplier and denoted as a "public benefits charge", to help defray the costs associated with funding low-income energy assistance programs such as bill assistance and weatherization for residential energy consumers in Colorado, subject to the following conditions:

(I) The total amount collected annually through such public benefits charge shall be at least three-quarters of one percent of the real dollar equivalent of each utility's 1998 nominal-dollar regulated gas revenues received for the geographic area or group of customers that is subject to the plan. Additionally, within one year following the implementation of the first natural gas supplier choice program by a natural gas utility that affects a significant number of low-income households, the public benefits charges for all natural gas public utilities that have implemented a voluntary plan shall be set at a level sufficient to raise a total additional sum of one hundred fifty thousand dollars to fund the study provided for in subsection (12) of this section.

(II) The public benefits charge shall be separately stated on each customer's bill for natural gas delivery service in the same manner and with the same prominence as is the charge to defray the utility's transition costs; and

(III) The public benefits charge shall be imposed on all natural gas delivered by the utility in a manner that is competitively neutral and nonbypassable.

(c) The governing body of each municipal utility providing natural gas service shall have the authority to consider and approve or reject a voluntary plan submitted by the natural gas municipal utility, for all or a portion of its service territory, that provides for:

(I) The separation of natural gas service into natural gas supply service and natural gas delivery service; and

(II) The deregulation of municipal natural gas supply service. In making a determination to approve or reject the voluntary plan submitted, the governing body shall apply the criteria set forth in paragraph (c) of subsection (3) of this section, but only to the extent applicable to municipal utility operations.

(d) (I) If the governing body of a municipality approves a plan for the voluntary separation of natural gas service offerings and the deregulation of natural gas supply, the municipal utility may request authority from the governing body of the municipality to treat any proposed contracts or agreements for natural gas supply service being negotiated by the municipal utility as confidential information until such contracts or agreements are formally executed. Upon such request, the governing body of the municipality shall hold a hearing to determine whether confidential treatment of such contracts is warranted in order to allow the municipal utility to compete effectively as a provider of natural gas supply service.

(II) If, after a hearing pursuant to subparagraph (I) of this paragraph (d), the governing body determines that confidential treatment of the contracts is warranted, then:

(A) Such contracts shall not be subject to public disclosure under section 24-72-203, C.R.S., until formally executed by the parties; and

(B) Discussion by the governing body of such contracts or the contents thereof prior to execution may properly be the subject of an executive session, as the term is used in section 24-6-402, C.R.S. This paragraph (d) shall not be construed to limit or condition the governing body's authority to meet in executive session for any other reason enumerated in section 24-6-402, C.R.S.

(e) The commission or other governing body shall retain the authority to establish guidelines regarding gas transportation service. Such guidelines may include, but are not limited to, provisions concerning the establishment of rates, terms, and conditions for the provisioning of gas transportation services by a natural gas public utility, regardless of whether the utility has an approved voluntary plan.

(3) (a) The commission is hereby granted the authority to consider and approve, reject, or approve with modifications a voluntary plan submitted by a natural gas public utility, for all or a portion of its service territory, that:

(I) Provides for the separation of natural gas service into natural gas supply service and natural gas delivery service; and

(II) Allows for competition in natural gas supply service.

(b) The commission may also consider and approve, reject, or approve with modifications as a part of any plan submitted in accordance with paragraph (a) of this subsection (3), the proposal of a natural gas public utility to participate as a competing supplier of natural gas. If the commission finds that a utility's plan meets the criteria set forth in paragraph (c) of this subsection (3) and is in the public interest, the commission shall approve the plan. If the plan is approved or approved with modifications, the commission shall determine the requirements or conditions under which the natural gas public utility shall be permitted to offer supply service. The commission may, without limitation, determine that the natural gas public utility shall be permitted to compete as a supplier of natural gas on an unregulated basis or determine that the natural gas public utility shall be permitted to compete as a supplier of natural gas on an unregulated basis only through an affiliate. Alternatively, the commission may establish such requirements or conditions as are in the public interest considering the market position of the natural gas public utility. After the plan is approved, all natural gas supply service, other than fallback service, established under the plan as a competitive service shall thereafter be sold on an unregulated basis without an obligation to serve.

(c) The commission shall not approve a plan submitted pursuant to paragraph (a) of this subsection (3) unless the price charged for natural gas delivery services does not subsidize natural gas supply service under the plan and, in addition, the plan:

(I) Provides for nondiscriminatory natural gas delivery service over the public utility's pipelines so that all natural gas consumers covered by the plan, including those who are currently transportation customers of the natural gas public utility, shall have ready access to natural gas supply service from competing sources;

(II) Does not present any unnecessary barriers that prevent or reduce ready access to natural gas supply service for all classes of consumers, including ensuring nondiscriminatory access to upstream capacity and storage services by all competitors;

(III) Establishes safeguards to eliminate the unreasonable exercise of market power by any person to the detriment of consumers or competitors;

(IV) Provides for consumer protection deemed necessary by the commission to assure reliable natural gas supply service, taking into consideration the needs of consumers. Such protections may include, but shall not be limited to, backup gas supply availability, excess peak day supply margins, standards of conduct, and full-rate recovery of any prudent costs incurred by a natural gas public utility related to any reasonable efforts the utility may undertake to avoid gas supply interruptions to consumers served by its delivery system.

(V) Further provides for those consumer protections deemed necessary by the commission to assure that fallback retail natural gas supply service, on a firm basis with adequate backup, is available to customers under reasonable terms and conditions. Such fallback retail natural gas supply service protection may or may not be provided by the incumbent natural gas public utility. These protections shall include, but are not limited to, the development of a commission-approved standard offer gas supply service or the use of a commission-approved competitive bidding process to assure that natural gas supply is available at fair and reasonable prices for those customers who do not receive supply offers, who do not select a competitive natural gas provider, who are refused service by a supplier, whose service is canceled by a supplier, who need service while moving or during other transitions, or whose supplier fails to supply service. If a utility provides regulated fallback service, the utility shall be allowed to recover all prudently incurred costs related to the provision of fallback supplies through regulated standard offer gas supply service.

(VI) Provides for consumer education concerning the natural gas public utility's restructuring of its rates and the choices that will be made available to consumers in the competitive supply market;

(VII) Does not degrade the integrity or reliability of natural gas delivery service or of any upstream third-party pipeline and storage services that are necessary to maintain such reliability and that may be held by the public utility as part of the plan; except that this subparagraph (VII) shall not preclude the necessary upstream third-party pipeline and

storage services from being held by competitive natural gas providers unless the commission finds that such condition results in a degradation of the integrity or reliability of natural gas distribution service;

(VIII) Provides for funding of low-income energy assistance programs such as bill assistance and weatherization through the assessment of a separately stated distribution charge, denoted a "public benefits charge", consistent with the authority of the utility to collect the public benefits charge as established in this section. The moneys received through the implementation of the public benefits charge shall be administered by the Colorado energy assistance foundation, which is the entity created under section 40-8.5-104, or its successor, to be used for the purposes of low-income energy assistance payments and programs, low-income weatherization assistance and programs, low-income energy education, and energy conservation. The Colorado energy assistance foundation shall file a report with the commission annually showing amounts of money collected under the public benefits charge and demonstrating that the moneys were used to fund low-income energy assistance programs as established herein.

(IX) Contains all terms and conditions that the commission deems necessary to protect the public interest and to foster competition in the supply of natural gas, including, without limitation, terms and conditions that address the following issues:

- (A) The manner in which price and terms and conditions should be disclosed;
- (B) The extent to which natural gas utilities and suppliers are obligated to serve all customers;
- (C) Appropriate credit and collection practices;
- (D) The terms under which service may be discontinued;
- (E) How partial payments are allocated;
- (F) Protecting customer privacy;
- (G) Prohibiting unfair and deceptive marketing practices; and
- (H) The degree of access to customer information needed by suppliers to promote competition;

(X) Provides that, as an aspect of implementing the plan, no consumer's natural gas supplier may be changed without the consumer's prior express consent except as ordered by the commission. Either through rule-making or through consideration of methodology proposed in the plan, the commission shall establish allowable express consent verification methods which may include written confirmation, third-party oral confirmation, or other appropriate procedures. The commission shall also establish and determine the extent to which a supplier who causes consumers to be changed without their consent is liable to those consumers and their chosen providers.

(XI) Provides for funding of the commission and the office of consumer counsel based upon a charge to end-use customers, as determined by the commission, as a part of the natural gas delivery function, regardless of the identity of the natural gas supplier. Such new funding method shall be competitively neutral and shall be designed to generate annual revenues equivalent to the average annual revenues generated under sections 40-2-109 to 40-2-114 during calendar years 1994 to 1998 associated with the sale of natural gas service from the geographic area or group of customers affected by the plan. Whenever such new funding method is instituted for any specific geographic area or group of customers, the natural gas public utilities serving such area or group shall no longer pay the fees that would otherwise have been required under said sections.

(XII) (A) Maintains regulated, cost-based rates for gas supply service from the public utility until such time as, in the aggregate, no less than thirty-three and one-third percent of the customers covered by a plan are served by competitive natural gas providers, which may include affiliates of the public utility; there are a minimum of five competitive natural gas providers not affiliated with the public utility unless the commission determines that, in geographic areas covered by the plan, less than five competitive natural gas suppliers provide effective competition; and the competitive natural gas suppliers not affiliated with the public utility serve no less than eighteen percent of the customers covered by a plan. When these conditions are met, the public utility supply service to the geographic area or to customers covered by a plan may be deregulated and the fallback supply provision of the plan shall become effective.

(B) For purposes of this subparagraph (XII), the number of customers served by competitive natural gas suppliers shall be determined based on the number of natural gas meters served by competitive natural gas suppliers in the geographic area covered by the plan, other than those meters served under the natural gas utility's gas transportation tariffs at the time the plan is implemented, whether directly or through a marketer or broker, compared to the total number of natural gas meters in the geographic area covered by the plan.

(4) If the commission approves a natural gas public utility's voluntary plan with modifications, the utility shall have the option to reject the modified plan and continue to be regulated as before. However, if a natural gas public utility exercises this option, it may not file another voluntary plan for a minimum of two years unless otherwise permitted by the commission and it may not recover in rates the costs and administrative charges incurred associated with the design and litigation of its voluntary plan proposal.

(5) The department of revenue is hereby authorized to collect funding for the commission and the office of consumer counsel in accordance with subparagraph (XI) of paragraph (c) of subsection (3) of this section.

(6) The commission shall establish, by rule or by alternative filing by natural gas public utilities or gas supply companies, such certification requirements, terms and conditions for gas supply service, reporting requirements, and compliance procedures for competitive suppliers, aggregators other than municipalities or counties operating as aggregators within their jurisdictional boundaries, or brokers as the commission deems necessary to provide Colorado retail consumers with reliable natural gas supply service. Such requirements may include, without limitation, complaint procedures for enforcement of the commission's rules and procedures for the suspension or revocation of certification and operating authority of competitive suppliers, aggregators other than municipalities or counties operating as aggregators within their jurisdictional boundaries, or brokers for violation of commission rules as well as the assessment of fines and penalties for violations of commission rules and standards of conduct, in addition to other commission rules and enforcement mechanisms. In the certification requirements the commission shall require natural gas suppliers to operate a customer service location in the state and provide customers with a toll-free telephone number to reach the natural gas supplier.

(7) (a) The commission shall permit each natural gas public utility recovery, through its tariff rates for delivery of natural gas, of all or a portion of the utility's transition costs as may be just and reasonable if such recovery, for transition costs other than costs identified in sub-subparagraphs (G) and (H) of subparagraph (II) of paragraph (b) of this subsection (7), does not increase the annual charges for regulated gas delivery service in excess of one percent of the utility's jurisdictional gas revenues booked or recorded in calendar year 1998 unless the utility is thereby unable to recover such transition costs as may be approved by the commission pursuant to this subsection (7) within fifteen years. In such a case, the commission shall ensure that the recovery of the utility's transition costs, excluding those identified in sub-subparagraphs (G) and (H) of subparagraph (II) of paragraph (b) of this subsection (7), does not increase the annual charges for regulated gas delivery service in excess of two percent of the utility's jurisdictional gas revenues booked or recorded in calendar year 1998. To the extent the commission approves the recovery of transition costs identified in sub-subparagraphs (G) and (H) of subparagraph (II) of paragraph (b) of this subsection (7), those costs shall be recovered over a reasonable period of time, as determined by the commission.

(b) (I) As used in this subsection (7), "transition costs" means all costs determined by the commission to be legitimate, verifiable, and prudently incurred in the provision of natural gas service to customers in Colorado that arise from or are related to contracts, investments, or other obligations existing on or before the date of implementation of the voluntary plan and no longer recoverable under the plan, whether such costs are in the form of direct expenditures for capital assets, operating expenses, investments, long-term supply contracts or other future obligations, or any other form.

(II) Transition costs may include, but are not limited to, the following:

(A) Costs and administrative charges incurred by a natural gas public utility resulting from the design and implementation of its voluntary plan;

(B) Costs incurred before, on, or after the date of implementation of the voluntary plan and that are related to preexisting gas supply, transportation, or storage service contracts, including any contract buyout or buy-down costs, contract reformation or termination costs, contract litigation costs, fees, judgments, or settlements, other than those costs that have been the subject of litigation prior to January 1, 1999, as identified in sub-subparagraph (H) of this subparagraph (II);

(C) Investments in assets that are stranded by competition for natural gas supply service;

(D) Interstate or intrastate third-party pipeline costs;

(E) Balancing costs;

(F) Underground storage costs;

(G) Deferred or prior-period gas costs not yet recovered at the time of conversion to competition in the provision of natural gas supply service;

(H) Costs incurred before, on, or after the date of implementation of the voluntary plan and that are related to preexisting gas supply contracts that have been the subject of litigation prior to January 1, 1999, including any above market costs, contract buyout, buy-down, reformation, or termination costs, litigation costs, fees, judgments, or settlements; and

(I) Any other costs that the commission determines to be recoverable transition costs.

(III) Transition costs shall not include:

(A) Costs that are or could be included within the existing rates of the natural gas public utility and that would result in double recovery of such costs if they were so included; or

(B) Costs committed to or incurred after the implementation date of the voluntary plan unless the commission determines that allowing recovery of such costs is in the public interest or that the incurrence of such costs is reasonable and prudent for the purpose of resolving or mitigating other transition costs.

(IV) A natural gas public utility shall not be entitled to recover its transition costs unless the commission finds that the utility has made reasonable efforts to mitigate transition costs. The commission shall determine the appropriate method and amortization period for a utility's recovery of transition costs and may establish such other reasonable procedures and conditions for the recovery of transition costs as the commission may determine are consistent with this section and in the public interest.

(c) Except to the extent provided in plan provisions or rules adopted by the commission governing the relationship between the public utility and its affiliates, the commission shall not impose on a natural gas public utility or its affiliate, with respect to competitive natural gas supply services, any requirement that is not imposed upon competing, non-utility providers of natural gas supply services, unless the commission determines that the imposition of such requirement is necessary to protect the public interest.

(8) The public benefits charge and its funding method shall continue in effect until at least December 31, 2005, and shall remain in effect thereafter until and unless replaced with a different legislatively adopted funding mechanism for statewide low-income energy assistance programs that assures the availability of adequate resources and that is consistent with the recommendations of the 1998 governor's energy assistance reform task force for the purpose of defraying the costs of low-income energy assistance. On or before December 1, 2004, the Colorado energy assistance foundation, which is the entity created under section 40-8.5-104, or its successor, in conjunction with any interested natural gas utility or natural gas supplier, shall recommend such a different funding mechanism for low-income energy assistance programs to the general assembly for adoption.

(9) Repealed.

(10) The general assembly determines that a new funding formula should be devised to adequately fund the commission's and office of consumer counsel's administrative expenses. On or before December 1, 2000, the commission and the office of consumer counsel shall recommend to the general assembly those legislative changes needed to develop appropriate funding mechanisms for the public utilities commission and the office of consumer counsel. This provision is intended to provide a comprehensive replacement for the funding method contained in the utility plan under subparagraph (XI) of paragraph (c) of subsection (3) of this section.

(11) The commission is specifically authorized at its sole discretion to adopt all necessary rules in furtherance of this section, including, but not limited to, standards of conduct, unfair and deceptive marketing practices, and consumer protections.

(12) Repealed.

(13) In any area where competitive gas supply choices are afforded to customers, any municipality or county or combination thereof may serve as a competitive supplier or, without buying and selling gas, act as an aggregator of the loads of its residents and businesses and contract with a certified supplier for its gas supply needs and the gas supply needs of its residents or businesses or both such residents and businesses; except that nothing in this subsection (13) shall require either a resident or business to buy natural gas supply service from a municipality serving as a supplier or acting as an aggregator of the loads of its residents or businesses.

(14) Each provider of natural gas supply service and natural gas delivery service shall collect and remit all applicable sales and use taxes. In a transaction involving the sale or furnishing of natural gas service, the transaction shall be deemed to occur where the natural gas is used or consumed.

(15) The commission shall undertake an investigation into natural gas public utilities' supply acquisition practices. The investigation shall examine, among other items, how public utilities currently acquire supply and their ability to manage the risk of price spikes in natural gas markets. Based on the investigation's findings, the commission may provide recommendations as to how natural gas portfolios might be structured in the future so as to provide greater long-term natural gas price stability for consumers. Information from the investigation shall be made available to interested parties at the commission's office. Such portfolio shall include a comparison of costs of natural gas contracts to the cost of coal syngas contracts that may become available in the future.

Source: L. 99: Entire section added, p. 954, § 1, effective August 4. L. 2001: (15) added, p. 1523, § 2, effective August 8. L. 2002: (9) and (12) repealed, p. 260, § 1, effective August 7. L. 2004: (15) amended, p. 585, § 2, effective August 4.

40-2-123. New energy technologies - consideration by commission - incentives - demonstration projects - definitions - legislative declaration - repeal. (1) (a) The commission shall give the fullest possible consideration to the cost-effective implementation of new clean energy and energy-efficient technologies in its consideration of generation acquisitions for electric utilities, bearing in mind the beneficial contributions such technologies make to Colorado's energy security, economic prosperity, environmental protection, and insulation from fuel price increases. The commission shall consider utility investments in energy efficiency to be an acceptable use of ratepayer moneys.

(b) The commission may give consideration to the likelihood of new environmental regulation and the risk of higher future costs associated with the emission of greenhouse gases such as carbon dioxide when it considers utility proposals to acquire resources. Where utilities eliminate or reduce carbon dioxide emissions through the use of capture and sequestration, the commission may consider the benefits of using carbon dioxide for enhanced oil recovery or other uses.

(c) The commission shall give the fullest possible consideration to proposals under the reenergize Colorado program, created in section 24-33-115, C.R.S., with particular attention to those projects offering the prospect of job creation and local economic growth.

(2) (a) The commission shall consider proposals by Colorado electric utilities to propose, fund, and construct integrated gasification combined cycle generation facilities to demonstrate the feasibility of this clean coal technology with the use of western coal and with carbon dioxide capture and sequestration.

(b) As used in this subsection (2):

(I) "IGCC project" means an IGCC facility that:

(A) Demonstrates the use of IGCC technology to generate electricity using Colorado or other western coal;

(B) Does not exceed three hundred fifty megawatts nameplate capacity; except that it may exceed this capacity if the commission determines that a larger size is necessary to

obtain the benefits of federal cost-sharing, financial grants or tax benefits, or other financial opportunities or arrangements benefitting the project, including opportunities to jointly develop the project with other electric utilities;

(C) Demonstrates the capture and sequestration of a portion of the project's carbon dioxide emissions;

(D) Includes methods and procedures to monitor the fate of the carbon dioxide captured and sequestered from the facility; and

(E) Is located in Colorado.

(II) "Integrated gasification combined cycle generation facility" or "IGCC facility" means a facility that converts coal to a gaseous fuel from which impurities are removed prior to combustion, uses the gaseous fuel in a combustion turbine to produce electricity, and captures the waste heat from the combustion turbine to drive a steam turbine to produce more electricity. An IGCC facility may also use natural gas, in addition to gasified coal, as a fuel in the combustion turbine.

(c) A public utility may apply under this subsection (2) to the commission for a certificate of public convenience and necessity and for cost recovery for one IGCC project. The utility's application shall demonstrate why the utility should be granted a waiver of the commission's rules requiring competitive resource acquisition. In addition, in its application, the utility shall set forth information concerning:

(I) The proposed IGCC project's economic and technical feasibility;

(II) Its near-term and future commercial development potential;

(III) Its projected efficiency;

(IV) The projected cost of the project, the projected incremental average rate impact expected from the project, and the form of rate recovery requested by the utility; and

(V) Other relevant information as the commission may require.

(d) In its application, the public utility seeking to build an IGCC project shall also provide information concerning the following environmental matters:

(I) The IGCC project's projected water savings, emission rates, and other environmental benefits;

(II) Any environmental and public safety impacts of the project;

(III) The capture and sequestration of a portion of the project's carbon dioxide emissions and the proposed level of carbon dioxide to be captured and sequestered from the IGCC project;

(IV) An analysis of the economic implications and technical feasibility of different levels of carbon capture and sequestration; and

(V) Other relevant information as may be required by the commission.

(e) (I) The commission shall provide an opportunity for public comment and evidentiary hearing on the public utility's application. The commission shall determine whether the purposes of this section and the public interest are served by waiving the commission's rules to grant the utility a certificate of public convenience and necessity to construct the IGCC project instead of requiring the utility to acquire resources in accordance with the commission's rules requiring competitive resource acquisition. If the commission grants the utility a certificate of public convenience and necessity for the proposed IGCC project, the commission shall issue a declaratory order for cost recovery in accordance with paragraphs (f) and (g) of this subsection (2). In making its determination, the commission shall consider whether the project can be constructed for reasonable cost and rate impact, taking into account the breakthrough nature of the project.

(II) In evaluating a project under this section, in addition to the considerations set forth in subsection (1) of this section, the commission shall consider the factors set forth in paragraphs (c) and (d) of this subsection (2) and the amount of federal, state, or other moneys available for the project. Nothing in this section shall be construed to require the commission to monetize the potential environmental benefits associated with a proposed IGCC project.

(f) (I) A public utility shall be entitled to fully recover, through a separate rate adjustment clause from its Colorado retail customers, the costs that it prudently incurs in planning, developing, constructing, and operating an approved IGCC project, net of any federal or state funds received for such IGCC project. The rate adjustment clause may be

terminated by the commission if all of the planning, development, construction, and operating costs of the IGCC project have been included in the public utility's base rates as a result of a rate case filed after the IGCC plant commences operation. Capital investments made by a utility in connection with an approved IGCC project shall be recoverable over the useful life of the project. To provide additional encouragement to utilities to pursue the development of an IGCC project, the commission shall approve current recovery by the utility through the rate adjustment clause of the utility's weighted average cost of capital, including its most recently authorized rate of return on equity, for expenditures on an IGCC project during the construction, startup, and implementation phases of the IGCC project.

(II) If a public utility's wholesale sales are subject to regulation by the federal energy regulatory commission, and if the public utility sells power on the wholesale market from an IGCC project developed pursuant to paragraph (a) of this subsection (2), the commission shall determine whether to assign a portion of the IGCC project's cost of service to be recovered from the public utility's wholesale customers. The commission may make such assignment to the extent that it does not conflict with the public utility's wholesale contracts entered into before April 1, 2006.

(III) If the commission makes an assignment of costs pursuant to subparagraph (II) of this paragraph (f), the public utility may apply to the federal energy regulatory commission for recovery, effective on the date of filing of the application, of the portion of the IGCC project's costs assigned to the public utility's wholesale customers. During the pendency of such application, the commission shall permit the public utility to recover the portion of costs assigned to the public utility's wholesale customers from its retail customers.

(IV) Notwithstanding subparagraph (III) of this paragraph (f), if the public utility fails to apply to the federal energy regulatory commission within six months after the commission's final order assigning a portion of the IGCC project's costs to the public utility's wholesale customers, or if the public utility fails to make a diligent, good faith effort to persuade the federal energy regulatory commission to approve the cost recovery from the public utility's wholesale customers, the public utility shall not be entitled to recover the assigned portion of the IGCC project costs from its retail customers.

(V) All revenues that a public utility receives from its wholesale customers for the IGCC project's costs shall be credited as an offset to the IGCC project's costs charged to the public utility's retail customers.

(g) If the commission approves the utility's application, the utility shall be entitled to recover the full life-cycle capital and operating costs associated with an IGCC project unless the commission finds such costs to be imprudent after fully taking into account the technical and financial challenges and uncertainties associated with the project. During the initial startup and testing period, to be determined by the commission as part of the application for a certificate of public convenience and necessity, the utility shall be entitled to recover through an adjustment clause any additional costs for electricity purchased as a result of planned and unplanned outages of an IGCC project. In structuring the adjustment clause, the utility's return on investment in an IGCC project from time to time shall be limited to the utility's most recent commission-approved return on investment in other utility generation facilities.

(h) Following the initial startup and testing period, the public utility shall be entitled to recover through an adjustment clause any additional costs for electricity purchased as a result of planned and unplanned outages of an IGCC project in the same manner, and under the same terms and conditions, as are applicable to non-IGCC projects. After the IGCC project achieves commercial operation, the public utility shall report on the cost and performance of the IGCC project. After investigation and public hearing, the commission may, on its own motion, order shutdown, decommissioning, or repowering of the IGCC project if it finds that continued operation would be contrary to the public interest. The public utility shall be entitled to full recovery of the prudently incurred costs associated with the shutdown, decommissioning, or repowering of the IGCC project.

(i) If the commission determines that the public utility should be granted a waiver of the commission's rules requiring competitive resource acquisition and that the incremental cost and rate impact of the IGCC facility to be reasonable, taking into account the breakthrough nature of the project, the factors set forth in paragraphs (c) and (d) of this subsection (2),

and the amount of federal, state, or other moneys available for the project, the commission shall authorize the project as an appropriate component of a utility's resource plan.

(j) In order to reduce the cost to Colorado consumers of an IGCC project, the department of public health and environment, the governor's office of economic development, and the Colorado energy office may provide public utilities with reasonable assistance in seeking and obtaining financial and other support and sponsorship for a project from the United States congress, the United States department of energy, and other appropriate federal and state agencies and institutions. To obtain this assistance, the utility may provide to these state agencies copies of its IGCC project proposal. The Colorado energy office shall manage and distribute to the utility some or all of any funds provided by the state of Colorado or by the United States government to the state of Colorado for purposes of study or development of an IGCC project.

(k) To encourage advanced coal technology, which should lead to lower emissions and other environmental benefits compared to conventional coal-fired generation, financial support for the study, engineering, and development of an IGCC facility shall be appropriated from the clean energy development fund created in section 24-22-118, C.R.S. The utility shall report to the commission the results of its study, irrespective of whether the utility files an application with the commission under paragraph (c) of this subsection (2).

(l) To facilitate financing of an IGCC project, one or more public utilities may develop, construct, or own an IGCC facility through a special purpose entity or other affiliated partnership or corporation. If such an ownership structure is employed, the utility or utilities may apply to the commission for a waiver of the commission's rules requiring competitive resource acquisition. If the commission determines that the purposes of this section and the public interest are served by granting the waiver, the utility or utilities may enter into a power purchase agreement with the owner of the IGCC facility that provides compensation to the facility owner for its costs and provides a reasonable return on investment. Public utility payments made under such a power purchase agreement shall be recoverable through a rate adjustment clause on a timely basis.

(m) (I) Nothing in this subsection (2) shall be construed to prohibit a utility from proposing to acquire, through the commission-approved resource planning and acquisition processes, power and energy derived from an IGCC facility developed by the utility or by contract from an affiliate of the utility or from an owner of an IGCC facility not affiliated with the utility. Nothing in this section shall prevent a utility from applying for a certificate of public convenience and necessity to construct more than one IGCC facility.

(II) Notwithstanding any provision of subparagraph (I) of this paragraph (m), a utility may request a waiver of the commission's rules requiring competitive resource acquisition pursuant to this subsection (2) for only one IGCC project.

(3) (a) (I) Energy is critically important to Colorado's welfare and development and its use has a profound impact on the economy and environment. In order to diversify Colorado's energy resources, attract new businesses and jobs, promote development of rural economies, minimize water use for electric generation, reduce the impact of volatile fuel prices, and improve the natural environment of the state, the general assembly finds it in the best interests of the citizens of Colorado to develop and utilize solar energy resources in increasing amounts.

(II) For purposes of this subsection (3), "utility-scale" means projects with nameplate ratings in excess of two megawatts.

(b) The commission may consider whether acquisition of utility-scale solar resources is in the public interest, taking into account the associated costs and benefits, and, if so, the appropriate amount of utility-scale solar resources that should be acquired. In making this determination, the commission may consider the following potential attributes of utility-scale solar electric generation:

(I) Whether the proposed generation could provide energy storage to match the times during which utility generation is generally higher cost;

(II) Whether the proposed generation, due to modularity, scalability, and rapid deployment, could result in reduction of performance and financial risk for the utility;

(III) Whether utility-scale solar electric generation could reduce the consumption of water for electric generation;

(IV) Whether future costs can be stabilized through mitigation of the impact of unpredictable fossil fuel prices; and

(V) Whether carbon-free generation reduces long-term costs and risks related to potential carbon regulation or taxation.

(3.2) In its consideration of generation acquisitions for electric utilities, the commission may give the fullest possible consideration, at a utility's request, to the cost-effective implementation of new energy technologies for the generation of electricity from:

(a) Geothermal energy;

(b) The combustion of biomass, biosolids derived from the treatment of wastewater, and municipal solid waste. For purposes of this paragraph (b), "biomass" has the meaning established in section 40-2-124 (1) (a), as clarified by the commission.

(c) Hydroelectricity and pumped hydroelectricity, taking into account the associated costs and benefits. For purposes of this paragraph (c):

(I) "Hydroelectricity" means the generation and delivery to the interconnection meter of any source of electrical or mechanical energy by harnessing the kinetic energy of water that is:

(A) A new facility that is an addition to water infrastructure such as a reservoir, ditch, or pipeline that existed before January 1, 2011, and does not result in any change in the quantity or timing of diversions or releases for purposes of peak power generation; or

(B) A new facility that is placed into production as part of new water infrastructure such as a reservoir, ditch, or pipeline constructed on or after January 1, 2011, and operated for primary beneficial uses of water other than solely for production of electricity.

(II) "Pumped hydroelectricity" means electricity that is generated during periods of high electrical demand from water that has been pumped during periods of low electrical demand from a lower-elevation reservoir to a higher-elevation reservoir taking into account the potential benefits or impacts of the proposed facility on fishery health.

(3.3) In its consideration of generation acquisitions for electric utilities, the commission may give the fullest possible consideration to the cost-effective implementation of new energy technologies for the generation of electricity from methane produced biogenically in geologic strata as a result of human intervention.

(3.5) (a) The commission shall give the fullest possible consideration to projects that are eligible for full or partial funding under the federal "American Recovery and Reinvestment Act of 2009", Pub.L. 111-5, referred to in this subsection (3.5) as the "federal act", or any amendments thereto.

(b) The commission may create incentives and establish performance goals for a utility related to any project that the utility proposes that:

(I) Promotes renewable energy, demand side management, energy storage, transmission, smart grid, advanced fossil fuel technologies, or carbon capture and sequestration; and

(II) Uses tax credits, grants, loan guarantees, or other incentives that are provided for in or derived from the federal act.

(c) The commission may provide an incentive for a project pursuant to this subsection (3.5) only if the commission determines that the project will receive federal act funding and that the project benefits the economy and employment in the state.

(d) This subsection (3.5) applies only to rate-regulated utilities.

(e) This subsection (3.5) is repealed, effective July 1, 2013.

(4) This section does not expand or contract the commission's jurisdiction over cooperative electric associations under this title.

Source: L. 2001: Entire section added, p. 1524, § 4, effective August 8. **L. 2006:** Entire section amended, p. 1413, § 2, effective June 1. **L. 2008:** (2)(j) amended, p. 75, § 16, effective March 18; (1) amended and (3) and (4) added, p. 1686, § 1, effective June 2. **L. 2009:** (3.5) added, (SB 09-297), ch. 285, p. 1297, § 3, effective May 20. **L. 2010:** (1)(c) added, (HB 10-1349), ch. 387, p. 1816, § 4, effective June 8; (3.2) added, (SB 10-174), ch. 189, p. 815, § 11, effective August 11; (3.2) added, (SB 10-177), ch. 392, p. 1864, § 6, effective August 11; (3.3) added, ch. 389, p. 1825, § 1, effective August 11. **L. 2011:** (3.2)(c) added, (HB 11-1083), ch. 68, p. 179, § 1, effective August 10. **L. 2012:** (2)(j) amended, (HB 12-1315), ch. 224, p. 980, § 48, effective July 1.

Editor's note: (1) Subsection (2)(k) contains a reference to the clean energy development fund in § 24-22-118, C.R.S.; however, the fund does not exist. The fund was originally created in the introduced version of House Bill 06-1322 but was taken out before it was enacted.

(2) Amendments to subsection (3.2) by Senate Bill 10-174 and Senate Bill 10-177 were harmonized.

Cross references: For the legislative declaration contained in the 2006 act amending this section, see section 1 of chapter 300, Session Laws of Colorado 2006.

40-2-124. Renewable energy standard - definitions - net metering - legislative declaration. (1) Each provider of retail electric service in the state of Colorado, other than municipally owned utilities that serve forty thousand customers or fewer, shall be considered a qualifying retail utility. Each qualifying retail utility, with the exception of cooperative electric associations that have voted to exempt themselves from commission jurisdiction pursuant to section 40-9.5-104 and municipally owned utilities, shall be subject to the rules established under this article by the commission. No additional regulatory authority of the commission other than that specifically contained in this section is provided or implied. In accordance with article 4 of title 24, C.R.S., the commission shall revise or clarify existing rules to establish the following:

(a) Definitions of eligible energy resources that can be used to meet the standards. "Eligible energy resources" means recycled energy and renewable energy resources. The commission shall determine, following an evidentiary hearing, the extent to which such electric generation technologies utilized in an optional pricing program may be used to comply with this standard. A fuel cell using hydrogen derived from an eligible energy resource is also an eligible electric generation technology. Fossil and nuclear fuels and their derivatives are not eligible energy resources. For purposes of this section:

(I) "Biomass" means:

(A) Nontoxic plant matter consisting of agricultural crops or their byproducts, urban wood waste, mill residue, slash, or brush;

(B) Animal wastes and products of animal wastes; or

(C) Methane produced at landfills or as a by-product of the treatment of wastewater residuals.

(II) "Distributed renewable electric generation" or "distributed generation" means:

(A) Retail distributed generation; and

(B) Wholesale distributed generation.

(III) "Recycled energy" means energy produced by a generation unit with a nameplate capacity of not more than fifteen megawatts that converts the otherwise lost energy from the heat from exhaust stacks or pipes to electricity and that does not combust additional fossil fuel. "Recycled energy" does not include energy produced by any system that uses energy, lost or otherwise, from a process whose primary purpose is the generation of electricity, including, without limitation, any process involving engine-driven generation or pumped hydroelectricity generation.

(IV) "Renewable energy resources" means solar, wind, geothermal, biomass, new hydroelectricity with a nameplate rating of ten megawatts or less, and hydroelectricity in existence on January 1, 2005, with a nameplate rating of thirty megawatts or less.

(V) "Retail distributed generation" means a renewable energy resource that is located on the site of a customer's facilities and is interconnected on the customer's side of the utility meter. In addition, retail distributed generation shall provide electric energy primarily to serve the customer's load and shall be sized to supply no more than one hundred twenty percent of the average annual consumption of electricity by the customer at that site. For purposes of this subparagraph (V), the customer's "site" includes all contiguous property owned or leased by the customer without regard to interruptions in contiguity caused by easements, public thoroughfares, transportation rights-of-way, or utility rights-of-way.

(VI) "Wholesale distributed generation" means a renewable energy resource in Colorado with a nameplate rating of thirty megawatts or less and that does not qualify as retail distributed generation.

(b) Standards for the design, placement, and management of electric generation technologies that use eligible energy resources to ensure that the environmental impacts of such facilities are minimized.

(c) Electric resource standards:

(I) Except as provided in subparagraph (V) of this paragraph (c), the electric resource standards shall require each qualifying retail utility to generate, or cause to be generated, electricity from eligible energy resources in the following minimum amounts:

(A) Three percent of its retail electricity sales in Colorado for the year 2007;

(B) Five percent of its retail electricity sales in Colorado for the years 2008 through 2010;

(C) Twelve percent of its retail electricity sales in Colorado for the years 2011 through 2014, with distributed generation equaling at least one percent of its retail electricity sales in 2011 and 2012 and one and one-fourth percent of its retail electricity sales in 2013 and 2014;

(D) Twenty percent of its retail electricity sales in Colorado for the years 2015 through 2019, with distributed generation equaling at least one and three-fourths percent of its retail electricity sales in 2015 and 2016 and two percent of its retail electricity sales in 2017, 2018, and 2019; and

(E) Thirty percent of its retail electricity sales in Colorado for the years 2020 and thereafter, with distributed generation equaling at least three percent of its retail electricity sales.

(II) (A) Of the amounts of distributed generation in sub-subparagraphs (C), (D), and (E) of subparagraph (I) of this paragraph (c), at least one-half shall be derived from retail distributed generation.

(B) Solar generating equipment located on-site at customers' facilities shall be sized to supply no more than one hundred twenty percent of the average annual consumption of electricity by the consumer at that site. For purposes of this sub-subparagraph (B), the consumer's "site" shall include all contiguous property owned or leased by the consumer, without regard to interruptions in contiguity caused by easements, public thoroughfares, transportation rights-of-way, or utility rights-of-way.

(C) Distributed generation amounts in the electric resource standard for the years 2015 and thereafter may be changed by the commission for the period after December 31, 2014, if the commission finds, upon application by a qualifying retail utility, that these percentage requirements are no longer in the public interest. If such a finding is made, the commission may set the lower distributed generation requirements, if any, that shall apply after December 31, 2014. If the commission finds that the public interest requires an increase in the distributed generation requirements, the commission shall report its findings to the general assembly.

(III) Each kilowatt-hour of electricity generated from eligible energy resources in Colorado, other than retail distributed generation, shall be counted as one and one-quarter kilowatt-hours for the purposes of compliance with this standard.

(IV) To the extent that the ability of a qualifying retail utility to acquire eligible energy resources is limited by a requirements contract with a wholesale electric supplier, the qualifying retail utility shall acquire the maximum amount allowed by the contract. For any shortfalls to the amounts established by the commission pursuant to subparagraph (I) of this paragraph (c), the qualifying retail utility shall acquire an equivalent amount of either renewable energy credits; documented and verified energy savings through energy efficiency and conservation programs; or a combination of both. Any contract entered into by a qualifying retail utility after December 1, 2004, shall not conflict with this section.

(V) Notwithstanding any other provision of law but subject to subsection (4) of this section, the electric resource standards shall require each cooperative electric association and municipally owned utility that is a qualifying retail utility to generate, or cause to be generated, electricity from eligible energy resources in the following minimum amounts:

(A) One percent of its retail electricity sales in Colorado for the years 2008 through 2010;

(B) Three percent of retail electricity sales in Colorado for the years 2011 through 2014;

(C) Six percent of retail electricity sales in Colorado for the years 2015 through 2019; and

(D) Ten percent of retail electricity sales in Colorado for the years 2020 and thereafter.

(VI) Each kilowatt-hour of electricity generated from eligible energy resources at a community-based project shall be counted as one and one-half kilowatt-hours. For purposes of this subparagraph (VI), "community-based project" means a project located in Colorado:

(A) That is owned by individual residents of a community, by an organization or cooperative that is controlled by individual residents of the community, or by a local government entity or tribal council;

(B) The generating capacity of which does not exceed thirty megawatts; and

(C) For which there is a resolution of support adopted by the local governing body of each local jurisdiction in which the project is to be located.

(VII) (A) For purposes of compliance with the standards set forth in subparagraph (V) of this paragraph (c), each kilowatt-hour of renewable electricity generated from solar electric generation technologies shall be counted as three kilowatt-hours.

(B) Sub-subparagraph (A) of this subparagraph (VII) applies only to solar electric technologies that begin producing electricity prior to July 1, 2015. For solar electric technologies that begin producing electricity on or after July 1, 2015, each kilowatt-hour of renewable electricity shall be counted as one kilowatt-hour for purposes of compliance with the renewable energy standard.

(VIII) Electricity from eligible energy resources shall be subject to only one of the methods for counting kilowatt-hours set forth in subparagraphs (III), (VI), and (VII) of this paragraph (c).

(IX) For purposes of stimulating rural economic development and for projects up to thirty megawatts of nameplate capacity that have a point of interconnection rated at sixty-nine kilovolts or less, each kilowatt hour of electricity generated from renewable energy resources that interconnects to electric transmission or distribution facilities owned by a cooperative electric association or municipally owned utility may be counted for the life of the project as two kilowatt hours for compliance with the requirements of this paragraph (c) by qualifying retail utilities. This multiplier shall not be claimed for interconnections that first occur after December 31, 2014, and shall not be used in conjunction with another compliance multiplier. For qualifying retail utilities other than investor-owned utilities, the benefits described in this subparagraph (IX) apply only to the aggregate first one hundred megawatts of nameplate capacity of projects statewide that report having achieved commercial operations to the commission pursuant to the procedure described in this subparagraph (IX). To the extent that a qualifying retail utility claims the benefit described in this subparagraph (IX), those kilowatt-hours of electricity do not qualify for satisfaction of the distributed generation requirement of subparagraph (I) of this paragraph (c). The commission shall analyze the implementation of this subparagraph (IX) and submit a report to the senate local government and energy committee and the house of representatives committee on transportation and energy, or their successor committees, by December 31, 2011, regarding implementation of this subparagraph (IX), including how many megawatts of electricity have been installed or are subject to a power purchase agreement pursuant to this subparagraph (IX) and whether the commission recommends that the multiplier established by this subparagraph (IX) should be changed either in magnitude or expiration date. Any entity that owns or develops a project that will take advantage of the benefits of this subparagraph (IX) shall notify the commission within thirty days after signing a power purchase agreement and within thirty days after beginning commercial operations of an applicable project.

(d) A system of tradable renewable energy credits that may be used by a qualifying retail utility to comply with this standard. The commission shall also analyze the effectiveness of utilizing any regional system of renewable energy credits in existence at the time of its rule-making process and determine whether the system is governed by rules that are consistent with the rules established for this article. The commission shall not restrict the qualifying retail utility's ownership of renewable energy credits if the qualifying retail utility complies with the electric resource standard of paragraph (c) of this subsection (1), uses definitions of eligible energy resources that are limited to those identified in paragraph

(a) of this subsection (1), as clarified by the commission, and does not exceed the retail rate impact established by paragraph (g) of this subsection (1). Once a qualifying retail utility either receives a permit pursuant to article 7 or 8 of title 25, C.R.S., for a generation facility that relies on or is affected by the definitions of eligible energy resources or enters into a contract that relies on or is affected by the definitions of eligible energy resources, such definitions apply to the contract or facility notwithstanding any subsequent alteration of the definitions, whether by statute or rule. For purposes of compliance with the renewable energy standard, if a generation system uses a combination of fossil fuel and eligible renewable energy resources to generate electricity, a qualified retail utility that is not an investor-owned utility may count as eligible renewable energy only the proportion of the total electric output of the generation system that results from the use of eligible renewable energy resources.

(e) A standard rebate offer program, under which:

(I) (A) Each qualifying retail utility, except for cooperative electric associations and municipally owned utilities, shall make available to its retail electricity customers a standard rebate offer of a specified amount per watt for the installation of eligible solar electric generation on customers' premises up to a maximum of one hundred kilowatts per installation.

(B) The standard rebate offer shall allow the customer's retail electricity consumption to be offset by the solar electricity generated. To the extent that solar electricity generation exceeds the customer's consumption during a billing month, such excess electricity shall be carried forward as a credit to the following month's consumption. To the extent that solar electricity generation exceeds the customer's consumption during a calendar year, the customer shall be reimbursed by the qualifying retail utility at its average hourly incremental cost of electricity supply over the prior twelve-month period unless the customer makes a one-time election, in writing, to request that the excess electricity be carried forward as a credit from month to month indefinitely until the customer terminates service with the qualifying retail utility, at which time no payment shall be required from the qualifying retail utility for any remaining excess electricity supplied by the customer. The qualifying retail utility shall not apply unreasonably burdensome interconnection requirements in connection with this standard rebate offer. Electricity generated under this program shall be eligible for the qualifying retail utility's compliance with this article.

(I.5) The amount of the standard rebate offer shall be two dollars per watt; except that the commission may set the rebate at a lower amount if the commission determines, based upon a qualifying retail utility's renewable resource plan or application, that market changes support the change.

(II) Sales of electricity to a consumer may be made by the owner or operator of the solar electric generation facilities located on the site of the consumer's property if the solar generating equipment is sized to supply no more than one hundred twenty percent of the average annual consumption of electricity by the consumer at that site. For purposes of this subparagraph (II), the consumer's site shall include all contiguous property owned or leased by the consumer, without regard to interruptions in contiguity caused by easements, public thoroughfares, transportation rights-of-way, or utility rights-of-way. If the solar electric generation facility is not owned by the consumer, then the qualifying retail utility shall not be required by the commission to pay for the renewable energy credits generated by the facility on any basis other than a metered basis. The owner or operator of the solar electric generation facility shall pay the cost of installing the production meter.

(III) The qualifying retail utility may establish one or more standard offers to purchase renewable energy credits generated from the eligible solar electric generation on the customer's premises so long as the generation meets the size and location requirements set forth in subparagraph (II) of this paragraph (e) and so long as the generation is five hundred kilowatts or less in size. When establishing the standard offers, the prices for renewable energy credits should be set at levels sufficient to encourage increased customer-sited solar generation in the size ranges covered by each standard offer, but at levels that will still allow the qualifying retail utility to comply with the electric resource standards set forth in paragraph (c) of this subsection (1) without exceeding the retail rate impact limit in paragraph (g) of this subsection (1). The commission shall encourage qualifying retail

utilities to design solar programs that allow consumers of all income levels to obtain the benefits offered by solar electricity generation and shall allow programs that are designed to extend participation to customers in market segments that have not been responding to the standard offer program.

(f) Policies for the recovery of costs incurred with respect to these standards for qualifying retail utilities that are subject to rate regulation by the commission. These policies shall provide incentives to qualifying retail utilities to invest in eligible energy resources in the state of Colorado. Such policies shall include:

(I) Allowing a qualifying retail utility to develop and own as utility rate-based property up to twenty-five percent of the total new eligible energy resources the utility acquires from entering into power purchase agreements and from developing and owning resources after March 27, 2007, if the new eligible energy resources proposed to be developed and owned by the utility can be constructed at reasonable cost compared to the cost of similar eligible energy resources available in the market. The qualifying retail utility shall be allowed to develop and own as utility rate-based property more than twenty-five percent but not more than fifty percent of total new eligible energy resources acquired after March 27, 2007, if the qualifying retail utility shows that its proposal would provide significant economic development, employment, energy security, or other benefits to the state of Colorado. The qualifying retail utility may develop and own these resources either by itself or jointly with other owners, and, if owned jointly, the entire jointly owned resource shall count toward the percentage limitations in this subparagraph (I). For the resources addressed in this subparagraph (I), the qualifying retail utility shall not be required to comply with the competitive bidding requirements of the commission's rules; except that nothing in this subparagraph (I) shall preclude the qualifying retail utility from bidding to own a greater percentage of new eligible energy resources than permitted by this subparagraph (I). In addition, nothing in this subparagraph (I) shall prevent the commission from waiving, repealing, or revising any commission rule in a manner otherwise consistent with applicable law.

(II) Allowing qualifying retail utilities to earn an extra profit on their investment in eligible energy resource technologies if these investments provide net economic benefits to customers as determined by the commission. The allowable extra profit in any year shall be the qualifying retail utility's most recent commission authorized rate of return plus a bonus limited to fifty percent of the net economic benefit.

(III) Allowing qualifying retail utilities to earn their most recent commission authorized rate of return, but no bonus, on investments in eligible energy resource technologies if these investments do not provide a net economic benefit to customers.

(IV) Considering, when the qualifying retail utility applies for a certificate of public convenience and necessity under section 40-5-101, rate recovery mechanisms that provide for earlier and timely recovery of costs prudently and reasonably incurred by the qualifying retail utility in developing, constructing, and operating the eligible energy resource, including:

(A) Rate adjustment clauses until the costs of the eligible energy resource can be included in the utility's base rates; and

(B) A current return on the utility's capital expenditures during construction at the utility's weighted average cost of capital, including its most recently authorized rate of return on equity, during the construction, startup, and operation phases of the eligible energy resource.

(V) If the commission approves the terms and conditions of an eligible energy resource contract between the qualifying retail utility and another party, the contract and its terms and conditions shall be deemed to be a prudent investment, and the commission shall approve retail rates sufficient to recover all just and reasonable costs associated with the contract. All contracts for acquisition of eligible energy resources shall have a minimum term of twenty years; except that the contract term may be shortened at the sole discretion of the seller. All contracts for the acquisition of renewable energy credits from solar electric technologies located on site at customer facilities shall also have a minimum term of twenty years; except that such contracts for systems of between one hundred kilowatts and one megawatt may have a different term if mutually agreed to by the parties.

(VI) A requirement that qualifying retail utilities consider proposals offered by third parties for the sale of renewable energy or renewable energy credits. The commission may develop standard terms for the submission of such proposals.

(VII) A requirement that all distributed renewable electric generation facilities with a nameplate rating of one megawatt or more be registered with a renewable energy generation information tracking system designated by the commission.

(g) Retail rate impact rule:

(I) (A) Except as otherwise provided in subparagraph (IV) of this paragraph (g), for each qualifying utility, the commission shall establish a maximum retail rate impact for this section of two percent of the total electric bill annually for each customer. The retail rate impact shall be determined net of new alternative sources of electricity supply from noneligible energy resources that are reasonably available at the time of the determination.

(B) If the retail rate impact does not exceed the maximum impact permitted by this paragraph (g), the qualifying utility may acquire more than the minimum amount of eligible energy resources and renewable energy credits required by this section. At the request of the qualifying retail utility and upon the commission's approval, the qualifying retail utility may advance funds from year to year to augment the amounts collected from retail customers under this paragraph (g) for the acquisition of more eligible energy resources. Such funds shall be repaid from future retail rate collections, with interest calculated at the qualifying retail utility's after-tax weighted average cost of capital, so long as the retail rate impact does not exceed two percent of the total annual electric bill for each customer.

(C) As between residential and nonresidential retail distributed generation, the commission shall direct the utility to allocate its expenditures according to the proportion of the utility's revenue derived from each of these customer groups; except that the utility may acquire retail distributed generation at levels that differ from these group allocations based upon market response to the utility's programs.

(II) Each wholesale energy provider shall offer to its wholesale customers that are cooperative electric associations the opportunity to purchase their load ratio share of the wholesale energy provider's electricity from eligible energy resources. If a wholesale customer agrees to pay the full costs associated with the acquisition of eligible energy resources and associated renewable energy credits by its wholesale provider by providing notice of its intent to pay the full costs within sixty days after the wholesale provider extends the offer, the wholesale customer shall be entitled to receive the appropriate credit toward the renewable energy standard as well as any associated renewable energy credits. To the extent that the full costs are not recovered from wholesale customers, a qualifying retail utility shall be entitled to recover those costs from retail customers.

(III) Subject to the maximum retail rate impact permitted by this paragraph (g), the qualifying retail utility shall have the discretion to determine, in a nondiscriminatory manner, the price it will pay for renewable energy credits from on-site customer facilities that are no larger than five hundred kilowatts.

(IV) (A) For cooperative electric associations, the maximum retail rate impact for this section is one percent of the total electric bill annually for each customer.

(B) Notwithstanding subparagraph (I) of this paragraph (g), the commission may ensure that customers who install distributed generation continue to contribute, in a nondiscriminatory fashion, their fair share to their utility's renewable energy program fund or equivalent renewable energy support mechanism even if such contribution results in a charge that exceeds two percent of such customers' annual electric bills.

(h) **Annual reports.** Each qualifying retail utility shall submit to the commission an annual report that provides information relating to the actions taken to comply with this article including the costs and benefits of expenditures for renewable energy. The report shall be within the time prescribed and in a format approved by the commission.

(i) Rules necessary for the administration of this article including enforcement mechanisms necessary to ensure that each qualifying retail utility complies with this standard, and provisions governing the imposition of administrative penalties assessed after a hearing held by the commission pursuant to section 40-6-109. The commission shall exempt a qualifying retail utility from administrative penalties for an individual compliance year if the utility demonstrates that the retail rate impact cap described in paragraph (g) of this

subsection (1) has been reached and the utility has not achieved full compliance with paragraph (c) of this subsection (1). The qualifying retail utility's actions under an approved compliance plan shall carry a rebuttable presumption of prudence. Under no circumstances shall the costs of administrative penalties be recovered from Colorado retail customers.

(1.5) Notwithstanding any provision of law to the contrary, paragraph (e) of subsection (1) of this section shall not apply to a municipally owned utility or to a cooperative electric association.

(2) (Deleted by amendment, L. 2007, p. 257, § 1, effective March 27, 2007.)

(3) Each municipally owned electric utility that is a qualifying retail utility shall implement a renewable energy standard substantially similar to this section. The municipally owned utility shall submit a statement to the commission that demonstrates such municipal utility has a substantially similar renewable energy standard. The statement submitted by the municipally owned utility is for informational purposes and is not subject to approval by the commission. Upon filing of the certification statement, the municipally owned utility shall have no further obligations under subsection (1) of this section. The renewable energy standard of a municipally owned utility shall, at a minimum, meet the following criteria:

(a) The eligible energy resources shall be limited to those identified in paragraph (a) of subsection (1) of this section;

(b) The percentage requirements shall be equal to or greater in the same years than those identified in subparagraph (V) of paragraph (c) of subsection (1) of this section, counted in the manner allowed by said paragraph (c); and

(c) The utility must have an optional pricing program in effect that allows retail customers the option to support through utility rates emerging renewable energy technologies.

(4) For municipal utilities that become qualifying retail utilities after December 31, 2006, the percentage requirements identified in subparagraph (V) of paragraph (c) of subsection (1) of this section shall begin in the first calendar year following qualification as follows:

(a) Years one through three: One percent of retail electricity sales;

(b) Years four through seven: Three percent of retail electricity sales;

(c) Years eight through twelve: Six percent of retail electricity sales; and

(d) Years thirteen and thereafter: Ten percent of retail electricity sales.

(5) **Procedure for exemption and inclusion - election.**

(a) (Deleted by amendment, L. 2007, p. 257, § 1, effective March 27, 2007.)

(b) The board of directors of each municipally owned electric utility not subject to this section may, at its option, submit the question of its inclusion in this section to its consumers on a one meter equals one vote basis. Approval by a majority of those voting in the election shall be required for such inclusion, providing that a minimum of twenty-five percent of eligible consumers participates in the election.

(5.5) Each cooperative electric association that is a qualifying retail utility shall submit an annual compliance report to the commission no later than June 1 of each year in which the cooperative electric association is subject to the renewable energy standard requirements established in this section. The annual compliance report shall describe the steps taken by the cooperative electric association to comply with the renewable energy standards and shall include the same information set forth in the rules of the commission for jurisdictional utilities. Cooperative electric associations shall not be subject to any part of the compliance report review process as provided in the rules for jurisdictional utilities. Cooperative electric associations shall not be required to obtain commission approval of annual compliance reports, and no additional regulatory authority of the commission other than that specifically contained in this subsection (5.5) is created or implied by this subsection (5.5).

(6) (Deleted by amendment, L. 2007, p. 257, § 1, effective March 27, 2007.)

(7) (a) **Definitions.** For purposes of this subsection (7), unless the context otherwise requires:

(I) "Customer-generator" means an end-use electricity customer that generates electricity on the customer's side of the meter using eligible energy resources.

(II) “Municipally owned utility” means a municipally owned utility that serves five thousand customers or more.

(b) Each municipally owned utility shall allow a customer-generator’s retail electricity consumption to be offset by the electricity generated from eligible energy resources on the customer-generator’s side of the meter that are interconnected with the facilities of the municipally owned utility, subject to the following:

(I) **Monthly excess generation.** If a customer-generator generates electricity in excess of the customer-generator’s monthly consumption, all such excess energy, expressed in kilowatt-hours, shall be carried forward from month to month and credited at a ratio of one to one against the customer-generator’s energy consumption, expressed in kilowatt-hours, in subsequent months.

(II) **Annual excess generation.** Within sixty days after the end of each annual period, or within sixty days after the customer-generator terminates its retail service, the municipally owned utility shall account for any excess energy generation, expressed in kilowatt-hours, accrued by the customer-generator and shall credit such excess generation to the customer-generator in a manner deemed appropriate by the municipally owned utility.

(III) **Nondiscriminatory rates.** A municipally owned utility shall provide net metering service at nondiscriminatory rates.

(IV) **Interconnection standards.** Each municipally owned utility shall adopt and post small generation interconnection standards and insurance requirements that are functionally similar to those established in the rules promulgated by the public utilities commission pursuant to this section; except that the municipally owned utility may reduce or waive any of the insurance requirements. If any customer-generator subject to the size specifications specified in subparagraph (V) of this paragraph (b) is denied interconnection by the municipally owned utility, the utility shall provide a written technical or economic explanation of such denial to the customer.

(V) **Size specifications.** Each municipally owned utility may allow customer-generators to generate electricity subject to net metering in amounts in excess of those specified in this subparagraph (V), and shall allow:

(A) Residential customer-generators to generate electricity subject to net metering up to ten kilowatts; and

(B) Commercial or industrial customer-generators to generate electricity subject to net metering up to twenty-five kilowatts.

Source: Initiated 2004: Entire section added, see L. 2005, p. 2337, effective December 1, 2004, proclamation of the Governor issued December 1, 2004. **L. 2005:** Entire section amended, p. 234, § 1, effective August 8; (6) added by revision, see L. 2005, p. 2340, § 3. **L. 2007:** Entire section amended, p. 257, § 1, effective March 27. **L. 2008:** (7) added, p. 190, § 3, effective August 5. **L. 2009:** (1)(c)(II), (1)(e), and (1)(f)(V) amended and (1.5) added, (SB 09-051), ch. 157, p. 678, § 11, effective September 1. **L. 2010:** IP(1), (1)(a), (1)(c)(I), (1)(c)(II), (1)(c)(III), (1)(c)(IV), (1)(c)(VIII), (1)(e)(I), (1)(f)(IV), (1)(g)(I), (1)(g)(III), (1)(g)(IV), and (1)(i) amended and (1)(e)(I.5) and (1)(f)(VII) added, (HB 10-1001), ch. 37, pp. 144, 147, 148, §§ 1, 2, 3, effective August 11; (1)(c)(VI)(A) amended and (1)(c)(IX) added, (HB 10-1418), ch. 406, p. 2007, § 1, effective August 11; (1)(d) amended, (SB 10-177), ch. 392, p. 1864, § 7, effective August 11.

Editor’s note: (1) A declaration of intent was contained in the initiated measure, Amendment 37, and is reproduced below:

SECTION 1. Legislative declaration of intent:

Energy is critically important to Colorado’s welfare and development, and its use has a profound impact on the economy and environment. Growth of the state’s population and economic base will continue to create a need for new energy resources, and Colorado’s renewable energy resources are currently underutilized.

Therefore, in order to save consumers and businesses money, attract new businesses and jobs, promote development of rural economies, minimize water use for electricity generation, diversify Colorado’s energy resources, reduce the impact of volatile fuel prices, and

improve the natural environment of the state, it is in the best interests of the citizens of Colorado to develop and utilize renewable energy resources to the maximum practicable extent.

(2) This initiated measure was approved by a vote of the registered electors of the state of Colorado on November 2, 2004. The vote count for the measure was as follows:

FOR:	1,066,023
AGAINST:	922,577

40-2-125. Eminent domain restrictions. (1) A qualifying retail utility shall not have the authority to condemn or exercise the power of eminent domain over any real estate, right-of-way, easement, or other right pursuant to section 38-2-101, C.R.S., to site the generation facilities of a renewable energy system used in whole or in part to meet the electric resource standards set forth in section 40-2-124. This section shall not be construed to limit the authority of a home rule municipality under article XX of the Colorado constitution.

(2) Section 3 of this initiated measure provides that this section and section 40-2-124 shall be effective December 1, 2004.

Source: Initiated 2004: Entire section added, see L. 2005, p. 2337, effective December 1, 2004, proclamation of the Governor issued December 1, 2004. **L. 2005:** Entire section amended, p. 238, § 2, effective August 8; (2) added by revision, see L. 2005, p. 2340, § 3.

Editor's note: (1) A declaration of intent was contained in the initiated measure, Amendment 37, and is reproduced below:

SECTION 1. Legislative declaration of intent:

Energy is critically important to Colorado's welfare and development, and its use has a profound impact on the economy and environment. Growth of the state's population and economic base will continue to create a need for new energy resources, and Colorado's renewable energy resources are currently underutilized.

Therefore, in order to save consumers and businesses money, attract new businesses and jobs, promote development of rural economies, minimize water use for electricity generation, diversify Colorado's energy resources, reduce the impact of volatile fuel prices, and improve the natural environment of the state, it is in the best interests of the citizens of Colorado to develop and utilize renewable energy resources to the maximum practicable extent.

(2) This initiated measure was approved by a vote of the registered electors of the state of Colorado on November 2, 2004. The vote count for the measure was as follows:

FOR:	1,066,023
AGAINST:	922,577

40-2-126. Transmission facilities - biennial review - energy resource zones - definitions - plans - approval - cost recovery. (1) As used in this section, "energy resource zone" means a geographic area in which transmission constraints hinder the delivery of electricity to Colorado consumers, the development of new electric generation facilities to serve Colorado consumers, or both.

(2) On or before October 31 of each odd-numbered year, commencing in 2007, each Colorado electric utility subject to rate regulation by the commission shall:

- Designate energy resource zones;
- Develop plans for the construction or expansion of transmission facilities necessary to deliver electric power consistent with the timing of the development of beneficial energy resources located in or near such zones;
- Consider how transmission can be provided to encourage local ownership of renewable energy facilities, whether through renewable energy cooperatives as provided in section 7-56-210, C.R.S., or otherwise; and
- Submit proposed plans, designations, and applications for certificates of public convenience and necessity to the commission for simultaneous review pursuant to subsection (3) of this section.

(3) The commission shall approve a utility's application for a certificate of public convenience and necessity for the construction or expansion of transmission facilities pursuant to paragraph (b) of subsection (2) of this section if the commission finds that:

(a) The construction or expansion is required to ensure the reliable delivery of electricity to Colorado consumers or to enable the utility to meet the renewable energy standards set forth in section 40-2-124; and

(b) The present or future public convenience and necessity require such construction or expansion.

(4) Notwithstanding any other provision of law, in any application for a certificate of public convenience and necessity for the construction or expansion of transmission facilities pursuant to paragraph (b) of subsection (2) of this section, the commission shall issue a final order within one hundred eighty days after the application is filed. If the commission does not issue a final order within that period, the application shall be deemed approved.

Source: L. 2007: Entire section added, p. 266, § 2, effective March 27.

Cross references: For the legislative declaration contained in the 2007 act enacting this section, see section 1 of chapter 61, Session Laws of Colorado 2007.

40-2-127. Community energy funds - community solar gardens - definitions - rules - legislative declaration - repeal. (1) **Legislative declaration.** The general assembly hereby finds and declares that:

(a) Local communities can benefit from the further development of renewable energy, energy efficiency, conservation, and environmental improvement projects, and the general assembly hereby encourages electric utilities to establish community energy funds for the development of such projects;

(b) It is in the public interest that broader participation in solar electric generation by Colorado residents and commercial entities be encouraged by the development and deployment of distributed solar electric generating facilities known as community solar gardens, in order to:

(I) Provide Colorado residents and commercial entities with the opportunity to participate in solar generation in addition to the opportunities available for rooftop solar generation on homes and businesses;

(II) Allow renters, low-income utility customers, and agricultural producers to own interests in solar generation facilities;

(III) Allow interests in solar generation facilities to be portable and transferrable; and

(IV) Leverage Colorado's solar generating capacity through economies of scale.

(2) **Definitions.** As used in this section, unless the context otherwise requires:

(a) The definitions in section 40-2-124 apply; and

(b) In addition:

(I) (A) "Community solar garden" means a solar electric generation facility with a nameplate rating of two megawatts or less that is located in or near a community served by a qualifying retail utility where the beneficial use of the electricity generated by the facility belongs to the subscribers to the community solar garden. There shall be at least ten subscribers. The owner of the community solar garden may be the qualifying retail utility or any other for-profit or nonprofit entity or organization, including a subscriber organization organized under this section, that contracts to sell the output from the community solar garden to the qualifying retail utility. A community solar garden shall be deemed to be "located on the site of customer facilities".

(B) A community solar garden shall constitute "retail distributed generation" within the meaning of section 40-2-124, as amended by House Bill 10-1001, enacted in 2010.

(II) "Subscriber" means a retail customer of a qualifying retail utility who owns a subscription and who has identified one or more physical locations to which the subscription shall be attributed. Such physical locations shall be within either the same municipality or the same county as the community solar garden; except that, if the subscriber lives in a county with a population of less than twenty thousand, according to the most recent available census figures, such physical locations may be in another county, also with a

population of less than twenty thousand, within the service territory of the same qualifying retail utility and also adjacent to that of the community solar garden. The subscriber may change from time to time the premises to which the community solar garden electricity generation shall be attributed, so long as the premises are within the geographical limits allowed for a subscriber.

(III) "Subscription" means a proportional interest in solar electric generation facilities installed at a community solar garden, together with the renewable energy credits associated with or attributable to such facilities under section 40-2-124. Each subscription shall be sized to represent at least one kilowatt of the community solar garden's generating capacity and to supply no more than one hundred twenty percent of the average annual consumption of electricity by each subscriber at the premises to which the subscription is attributed, with a deduction for the amount of any existing solar facilities at such premises. Subscriptions in a community solar garden may be transferred or assigned to a subscriber organization or to any person or entity who qualifies to be a subscriber under this section.

(3) Subscriber organization - subscriber qualifications - transferability of subscriptions. (a) The community solar garden may be owned by a subscriber organization, whose sole purpose shall be beneficially owning and operating a community solar garden. The subscriber organization may be any for-profit or nonprofit entity permitted by Colorado law. The community solar garden may also be built, owned, and operated by a third party under contract with the subscriber organization.

(b) On or before October 1, 2010, the commission shall commence a rule-making proceeding to adopt rules as necessary to implement this section, including but not limited to rules to facilitate the financing of subscriber-owned community solar gardens. Such rules shall include:

(I) Minimum capitalization;

(II) The share of a community solar garden's eligible solar electric generation facilities that a subscriber organization may at any time own in its own name; and

(III) Authorizing subscriber organizations to enter into leases, sale-and-leaseback transactions, operating agreements, and other ownership arrangements with third parties.

(c) If a subscriber ceases to be a customer at the premises on which the subscription is based but, within a reasonable period as determined by the commission, becomes a customer at another premises in the service territory of the qualifying retail utility and within the geographic area served by the community solar garden, the subscription shall continue in effect but the bill credit and other features of the subscription shall be adjusted as necessary to reflect any differences between the new and previous premises' customer classification and average annual consumption of electricity.

(4) Community solar gardens not subject to regulation. Neither the owners of nor the subscribers to a community solar garden shall be considered public utilities subject to regulation by the commission solely as a result of their interest in the community solar garden. Prices paid for subscriptions in community solar gardens shall not be subject to regulation by the commission.

(5) Purchases of the output from community solar gardens. (a) (I) Each qualifying retail utility shall set forth in its plan for acquisition of renewable resources a plan to purchase the electricity and renewable energy credits generated from one or more community solar gardens over the period covered by the plan.

(II) For the first three compliance years commencing with the 2011 compliance year, each qualifying retail utility shall issue one or more standard offers to purchase the output from community solar gardens of five hundred kilowatts or less at prices that are comparable to the prices offered by the qualifying retail utility under standard offers issued for on-site solar generation. During these three compliance years, the qualifying retail utility shall acquire, through these standard offers, one-half of the solar garden generation it plans to acquire, to the extent the qualifying retail utility receives responses to its standard offers. Notwithstanding any provision of this subparagraph (II) to the contrary, renewable energy credits generated from solar gardens shall not be used to achieve more than twenty percent of the retail distributed generation standard in years 2011 through 2013.

(III) For the first three compliance years commencing with the 2011 compliance year, a qualifying retail utility shall not be obligated to purchase the output from more than six megawatts of newly installed community solar garden generation.

(IV) For each qualifying retail utility's compliance years commencing in 2014 and thereafter, the commission shall determine the minimum and maximum purchases of electrical output from newly installed community solar gardens of different output capacity that the qualifying retail utility shall plan to acquire, without regard to the six-megawatt ceiling of the first three compliance years. In addition, as necessary, the commission shall formulate and implement policies consistent with this section that simultaneously encourage:

(A) The ownership by customers of subscriptions in community solar gardens and of other forms of distributed generation, to the extent the commission finds there to be customer demand for such ownership;

(B) Ownership in community solar gardens by residential retail customers and agricultural producers, including low-income customers, to the extent the commission finds there to be demand for such ownership;

(C) The development of community solar gardens with attributes that the commission finds result in lower overall total costs for the qualifying retail utility's customers;

(D) Successful financing and operation of community solar gardens owned by subscriber organizations; and

(E) The achievement of the goals and objectives of section 40-2-124.

(b) (I) The output from a community solar garden shall be sold only to the qualifying retail utility serving the geographic area where the community solar garden is located. Once a community solar garden is part of a qualifying retail utility's plan for acquisition of renewable resources, as approved by the commission, the qualifying retail utility shall purchase all of the electricity and renewable energy credits generated by the community solar garden. The amount of electricity and renewable energy credits generated by each community solar garden shall be determined by a production meter installed by the qualifying retail utility or third-party system owner and paid for by the owner of the community solar garden.

(II) The purchase of the output of a community solar garden by a qualifying retail utility shall take the form of a net metering credit against the qualifying retail utility's electric bill to each community solar garden subscriber at the premises set forth in the subscriber's subscription. The net metering credit shall be calculated by multiplying the subscriber's share of the electricity production from the community solar garden by the qualifying retail utility's total aggregate retail rate as charged to the subscriber, minus a reasonable charge as determined by the commission to cover the utility's costs of delivering to the subscriber's premises the electricity generated by the community solar garden, integrating the solar generation with the utility's system, and administering the community solar garden's contracts and net metering credits. The commission shall ensure that this charge does not reflect costs that are already recovered by the utility from the subscriber through other charges. If, and to the extent that, a subscriber's net metering credit exceeds the subscriber's electric bill in any billing period, the net metering credit shall be carried forward and applied against future bills. The qualifying retail utility and the owner of the community solar garden shall agree on whether the purchase of the renewable energy credits from subscribers will be accomplished through a credit on each subscriber's electricity bill or by a payment to the owner of the community solar garden.

(c) The owner of the community solar garden shall provide real-time production data to the qualifying retail utility to facilitate incorporation of the community solar garden into the utility's operation of its electric system and to facilitate the provision of net metering credits.

(d) The owner of the community solar garden shall be responsible for providing to the qualifying retail utility, on a monthly basis and within reasonable periods set by the qualifying retail utility, the percentage shares that should be used to determine the net metering credit to each subscriber. If the electricity output of the community solar garden is not fully subscribed, the qualifying retail utility shall purchase the unsubscribed renewable energy and the renewable energy credits at a rate equal to the qualifying retail utility's average hourly incremental cost of electricity supply over the immediately preceding calendar year.

(e) Each qualifying retail utility shall set forth in its plan for acquisition of renewable resources a proposal for including low-income customers as subscribers to a community solar garden. The utility may give preference to community solar gardens that have low-income subscribers.

(f) Qualifying retail utilities shall be eligible for the incentives and subject to the ownership limitations set forth in section 40-2-124 (1) (f) for utility investments in community solar gardens and may recover through rates a margin, in an amount determined by the commission, on all energy and renewable energy credits purchased from community solar gardens. Such incentive payments shall be excluded from the cost analysis required by section 40-2-124 (1) (g).

(6) Nothing in this section shall be construed to waive or supersede the retail rate impact limitations in section 40-2-124 (1) (g). Utility expenditures for unsubscribed energy and renewable energy credits generated by community solar gardens shall be included in the calculations of retail rate impact required by that section.

(7) **Applicability to cooperative electric associations and municipally owned utilities.** This section shall not apply to cooperative electric associations or to municipally owned utilities.

Source: L. 2007: Entire section added, p. 265, § 2, effective March 27. **L. 2010:** Entire section amended, (HB 10-1342), ch. 344, p. 1592, § 1, effective June 5.

40-2-128. Solar photovoltaic installations - supervision by certified practitioners - qualifications of electrical contractors. (1) Effective January 1, 2012, for all photovoltaic installations funded wholly or partially through ratepayer-funded incentives as part of the renewable energy standard adjustment allowed under section 40-2-124:

(a) (I) The performance of all photovoltaic electrical work, the installation of photovoltaic modules, and the installation of photovoltaic module mounting equipment shall be subject to on-site supervision by a certified photovoltaic energy practitioner as designated by the north American board of certified energy practitioners (NABCEP) or another nationally recognized professional organization designated by the Colorado state electrical board by rule. Upon the initial application for funding or in the initial contract proposal, the applicant shall assume responsibility for employing or contracting with one or more certified energy practitioners to supervise the installation and as necessary to maintain the three-to-one ratio required by paragraphs (b) and (c) of this subsection (1), including during any off-site, preinstallation assembly. Approval of the payment of any incentives for the work shall be conditioned upon the applicant's supplying the name and certification number of each certified energy practitioner who actually provided on-site supervision or was present to maintain the three-to-one ratio required by paragraphs (c) and (d) of this subsection (1).

(II) Neither the commission nor the utility shall have responsibility for monitoring or enforcing compliance with this section. It shall be the responsibility of the applicant to obtain the information required by subparagraph (I) of this paragraph (a), and it shall be the responsibility of the qualifying retail utility to obtain from the applicant and retain, for at least one year after completion of the installation, copies of all documentation submitted by the applicant in connection with the installation.

(b) All work performed on the alternating-current side of the inverter will be performed by an electrical contractor who employs a licensed journeyman electrician or a licensed residential wireman who will perform the work. All electrical work that pertains to article 23 of title 12, C.R.S., will be performed by an electrical apprentice registered with the appropriate state regulatory agency, a licensed journeyman electrician, or a licensed residential wireman. The appropriate ratio of no less than one journeyman or residential wireman for every three electrical apprentices will be maintained.

(c) On a system with a direct current design capacity of more than five hundred kilowatts:

(I) During any photovoltaic electrical work, the ratio of the number of persons who are assisting with the work and who are neither licensed electricians nor registered electrical apprentices to the number of persons who are certified as provided in paragraph (a) of this

subsection (1) shall never exceed three to one, and a person who is both licensed and certified shall not count double for purposes of measuring this ratio; and

(II) There shall be at least one on-site supervisor who is certified as provided in paragraph (a) of this subsection (1) during the following stages; except that, if at any time during any of the following stages, there are more than twelve persons on the work site who are neither licensed electricians nor registered electrical apprentices and who are not certified as provided in paragraph (a) of this subsection (1), there shall be at least two persons who are certified as provided in paragraph (a) of this subsection (1) present on the work site and providing direct supervision of:

(A) The installation of photovoltaic modules;

(B) The installation of photovoltaic module mounting equipment; and

(C) Any photovoltaic electrical work.

(d) On a system with a direct current design capacity of five hundred kilowatts or less:

(I) The ratio of the number of persons who are assisting with the work and who are neither licensed electricians nor registered electrical apprentices to the number of persons who are certified as provided in paragraph (a) of this subsection (1) shall never exceed three to one, and a person who is both licensed and certified shall not count double for purposes of measuring this ratio, during the following stages:

(A) The installation of photovoltaic modules;

(B) The installation of photovoltaic module mounting equipment; and

(C) Any photovoltaic electrical work; and

(II) There shall be, at all times, at least one on-site supervisor who is certified as provided in paragraph (a) of this subsection (1).

(2) As used in this section, unless the context otherwise requires:

(a) (I) "Photovoltaic electrical work" means wiring, grounding, or repairing electrical apparatus and equipment in a photovoltaic distributed generation system.

(II) "Photovoltaic electrical work" includes the preinstallation assembly of photovoltaic modules to photovoltaic module mounting equipment for installation on-site.

(III) "Photovoltaic electrical work" does not include site preparation, trenching or excavating, hauling, or other work that is not specifically described in subparagraph (I) or (II) of this paragraph (a).

(b) "Photovoltaic module" means the module or panel that generates electricity through a photovoltaic process.

(c) "Photovoltaic module mounting equipment" means the racking, mounting, apparatus, equipment, or structure that physically supports and secures one or more photovoltaic modules in place or to a roof, wall, foundation, or pedestal.

Source: L. 2010: Entire section added, (HB 10-1001), ch. 37, p. 150, § 4, effective August 11.

40-2-129. New resource acquisitions - factors in determination - local employment - "best value" metrics. When evaluating electric resource acquisitions, the commission shall consider, on a qualitative basis, factors that affect employment and the long-term economic viability of Colorado communities. To this end, the commission shall require utilities to request the following information regarding "best value" employment metrics: The availability of training programs, including training through apprenticeship programs registered with the United States department of labor, office of apprenticeship and training; employment of Colorado workers as compared to importation of out-of-state workers; long-term career opportunities; and industry-standard wages, health care, and pension benefits. When a utility proposes to construct new facilities of its own, the utility shall supply similar information to the commission.

Source: L. 2010: Entire section added, (HB 10-1001), ch. 37, p. 150, § 4, effective August 11.

ARTICLE 2.1**Transportation of Hazardous Materials****40-2.1-101 to 40-2.1-106. (Repealed)**

Source: L. 89: Entire article repealed, p. 1640, § 6, effective July 1.

Editor's note: This article was added in 1979. For amendments to this article prior to its repeal in 1989, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

Cross references: For the "Hazardous Materials Transportation Act of 1987", see parts 1, 2, and 3 of article 20 of title 42.

ARTICLE 2.2**Transportation of Nuclear Materials****40-2.2-101 to 40-2.2-213. (Repealed)**

Source: L. 93: Entire article repealed, p. 1612, § 14, effective June 6.

Editor's note: This article was added in 1986. For amendments to this article prior to its repeal in 1993, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

Cross references: For the "Hazardous Materials Transportation Act of 1987", see parts 1, 2, and 3 of article 20 of title 42.

ARTICLE 3**Regulation of Rates and Charges**

Cross references: For the regulation of rates and charges by municipal utilities, see article 3.5 of this title.

40-3-101.	Reasonable charges - adequate service.		ation of household income and other factors - definitions.
40-3-102.	Regulation of rates - correction of abuses.	40-3-107.	Transmission of business of other companies.
40-3-103.	Utilities to file rate schedules - rules.	40-3-107.5.	Interconnection with renewable energy cooperatives.
40-3-103.5.	Medical exemption - tiered electricity rates - rules.	40-3-108.	Rates for long and short distances.
40-3-104.	Changes in rates - notice.	40-3-109.	Street transportation public utility - transfers.
40-3-104.3.	Manner of regulation - competitive responses.	40-3-110.	Information furnished commission - reports.
40-3-104.4.	Simplified regulatory treatment for small, privately owned water companies.	40-3-111.	Rates determined after hearing.
40-3-104.5.	Special provisions for rail carrier rate increases.	40-3-112.	Commission to provide local government with avoided cost information.
40-3-105.	Free and reduced service or transportation prohibited - exceptions.	40-3-113.	Rail rates for transportation of recyclable or recycled materials. (Repealed)
40-3-106.	Advantages prohibited - graduated schedules - consider-		

40-3-114. Cost allocation - effect on competitive markets.

40-3-115. Recovery of utility relocation costs.

40-3-101. Reasonable charges - adequate service. (1) All charges made, demanded, or received by any public utility for any rate, fare, product, or commodity furnished or to be furnished or any service rendered or to be rendered shall be just and reasonable. Every unjust or unreasonable charge made, demanded, or received for such rate, fare, product or commodity, or service is prohibited and declared unlawful. Rates and charges demanded or received by any public utility for gas transportation service furnished or to be furnished shall not be deemed to be unjust or unreasonable so long as said rate or charge is no greater than a maximum rate and no lower than a minimum rate determined by the commission (or, in the case of a municipal utility, by the governing body of the municipal utility in accordance with sections 40-3-102 and 40-3.5-102) to be just and reasonable, and the provision of such gas transportation service at such rates or charges shall not constitute per se unjust discrimination or the granting of a preference. Nothing in this subsection (1) shall limit or restrict the commission's authority to regulate rates and charges, correct abuses, or prevent unjust discrimination.

(2) Every public utility shall furnish, provide, and maintain such service, instrumentalities, equipment, and facilities as shall promote the safety, health, comfort, and convenience of its patrons, employees, and the public, and as shall in all respects be adequate, efficient, just, and reasonable.

Source: L. 13: p. 468, § 13. C.L. § 2924. CSA: C. 137, § 14. CRS 53: § 115-3-1. C.R.S. 1963: § 115-3-1. L. 91: (1) amended, p. 1417, § 9, effective April 19.

Cross references: For hearings on rate schedules, see § 40-6-111; for reparation for excessive charges, see § 40-6-119.

ANNOTATION

- I. General Consideration.
- II. Reasonable Charges.
- III. Adequate Services.

I. GENERAL CONSIDERATION.

Law reviews. For article, "Trying to Get the P.U.C. to Let You Run a Truck", see 7 Dicta 4 (Oct. 1930). For article, "Coal Mining a Public Utility", see 12 Dicta 267 (1935). For article, "Generation and Transmission Loan Policy Under the Rural Electrification Act", see 43 Den. L.J. 269 (1966). For article, "A Price Squeeze Theory for Implementation of Federal Power Commission v. Conway Corp.", see 50 U. Colo. L. Rev. 459 (1979). For article, "May Regulated Utilities Monopolize the Sun?", see 56 Den. L.J. 31 (1979). For article, "Retail Competition in the Electric Utility Industry", see 60 Den. L.J. 1 (1982). For comment, "Municipal Utilities in Colorado — Can They Charge Their Nonresident Customers More Than They Charge Their Resident Customers Just Because the Nonresident Lives on the Wrong Side of the Boundary?", see 60 U. Colo. L. Rev. 357 (1989).

The department of corrections is not a public utility and therefore not subject to review or regulation by the public utilities com-

mission pursuant to this section with respect to inmate telephone system. *Powell v. Colo. Pub. Utils. Comm'n*, 956 P.2d 608 (Colo. 1998).

Applied in *Colo. & S. Ry. v. State R.R. Comm'n*, 54 Colo. 64, 129 P. 506 (1912); *Consumers' League v. Colo. & S. Ry.*, 64 Colo. 502, 172 P. 1064 (1918); *Denver & Salt Lake Ry. v. St. Clair*, 94 Colo. 67, 28 P.2d 340 (1933); *Colo. Mun. League v. Pub. Utils. Comm'n*, 198 Colo. 217, 597 P.2d 586 (1979); *City of Montrose v. Pub. Utils. Comm'n*, 629 P.2d 619 (Colo. 1981). *Colo. Municipal League v. Pub. Utils. Comm'n*, 687 P.2d 416 (Colo. 1984).

II. REASONABLE CHARGES.

Commission's use of cost of service study prepared by commission's staff was supported by substantial evidence. The commission did not act arbitrarily and capriciously in accepting the staff's study under circumstances where the experts' opinions were varied and presented irreconcilable differences. In the absence of evidence that the staff study was inherently unsound, commission's decision should not be abandoned. *Consumer Counsel v. P.U.C.*, 786 P.2d 1086 (Colo. 1990).

Rates set by commission for interLATA access charge and intraLATA toll rates do not

unreasonably discriminate against resellers. When establishing an intraLATA toll rate, the commission is under no obligation to require a Bell operating company to impute to itself an access charge similar to one imposed on resellers. Wholesale rates approved by commission and charged to resellers for intraLATA toll services are not discriminatory, even though in some mileage bands and at some times of the day such rates exceed the retail rates charged by the Bell operating company to its own customers. *Consumer Counsel v. P.U.C.*, 786 P.2d 1086 (Colo. 1990) (decided under the "Intrastate Telecommunication Service Act", § 40-15-101 et seq., as it existed prior to its 1987 repeal and reenactment, which act provided that intraLATA toll services were governed by the doctrine of regulated monopoly and which did not provide for a prohibition against discriminatory charges).

Public utilities commission is entrusted with supervision and regulation of all public utilities, including rates and regulations established by previous contract. *Denver & S. Pac. Ry. v. City of Englewood*, 62 Colo. 229, 161 P. 151, (1916), writ of error dismissed, 248 U.S. 294, 39 S. Ct. 100, 63 L. Ed. 253 (1919).

Primary purpose of utility regulation is to insure that the rates charged are not excessive or unjustly discriminatory. *Cottrell v. City & County of Denver*, 636 P.2d 703 (Colo. 1981).

Rates to protect investor and consumer interests. The public utilities commission must set rates which protect both: (1) the right of the public utility company and its investors to earn a return reasonably sufficient to maintain the utility's financial integrity; and (2) the right of consumers to pay a rate which accurately reflects the cost of service rendered. *Pub. Serv. Co. v. Pub. Utils. Comm'n*, 644 P.2d 933 (Colo. 1982).

Determination as to what is fair, just, and reasonable rate is matter of judgment or discretion. *Mountain States Tel. & Tel. Co. v. Pub. Utils. Comm'n*, 182 Colo. 269, 513 P.2d 721 (1973). *Consumer Counsel v. P.U.C.*, 786 P.2d 1086 (Colo. 1990).

Basis for determination. The judgment or discretion on the part of the public utilities commission in determining what is a fair, just, and reasonable rate must be based upon evidentiary facts, calculations, known factors, relationship between known factors, and adjustments which may affect the relationship between known factors. *Mountain States Tel. & Tel. Co. v. Pub. Utils. Comm'n*, 182 Colo. 269, 513 P.2d 721 (1973).

Utility is entitled to reasonable return on value of property which is used and useful to the rendering of its service to the public. *Peoples Natural Gas Div. of N. Natural Gas Co. v. Pub. Utils. Comm'n*, 193 Colo. 421, 567 P.2d 377 (1977).

Historic test-year procedure as basis for rate fixing is not inherently unsound, but rather, the use of the most recent test year available is a reliable guideline in fixing rates to be charged for telephone service. *Mountain States Tel. & Tel. Co. v. Pub. Utils. Comm'n*, 182 Colo. 269, 513 P.2d 721 (1973).

Relationship between costs, investment, and revenue in historic test year is generally constant and reliable factor upon which a regulatory agency can make calculations which formulate the basis for fair and reasonable rates to be charged. *Mountain States Tel. & Tel. Co. v. Pub. Utils. Comm'n*, 182 Colo. 269, 513 P.2d 721 (1973).

Public utilities law was designed to permit adjustment of rates in order to prevent the hazard of risk of an increase in taxes and to make savings for the ratepayers in case of a decrease in taxes. *Colo. Mun. League v. Pub. Utils. Comm'n*, 172 Colo. 188, 473 P.2d 960 (1970).

Out-of-period adjustment involves change which has occurred or will occur or is expected to occur after the close of the test year. *Mountain States Tel. & Tel. Co. v. Pub. Utils. Comm'n*, 182 Colo. 269, 513 P.2d 721 (1973).

Out-of-period adjustments may be used to test reasonableness of requested rate increases. *Mountain States Tel. & Tel. Co. v. Pub. Utils. Comm'n*, 182 Colo. 269, 513 P.2d 721 (1973).

Commission may not question reasonableness of rate authorized by federal agency. Where the rate or acquisition cost is subject to federal regulation and authorized by a federal regulatory agency, the public utilities commission may not question its reasonableness. *Pub. Serv. Co. v. Pub. Utils. Comm'n*, 644 P.2d 933 (Colo. 1982).

Telephone company's proposed use of projected costs or budget estimates for future period would be an unreliable guideline for setting rates to be charged, as it would not be in the public interest to fix rates on pure conjecture. *Mountain States Tel. & Tel. Co. v. Pub. Utils. Comm'n*, 182 Colo. 269, 513 P.2d 721 (1973).

Rate of return on common equity of telephone company of 11.4% is not unlawful as being in violation of this statute. *Mountain States Tel. & Tel. Co. v. Pub. Utils. Comm'n*, 182 Colo. 269, 513 P.2d 721 (1973).

Review of rate by court. If the rate of return allowed is just and reasonable, and there is competent evidence to support the finding of the public utilities commission, then a reviewing court may not substitute its judgment for that of the commission. *Peoples Natural Gas Div. of N. Natural Gas Co. v. Pub. Utils. Comm'n*, 193 Colo. 421, 567 P.2d 377 (1977).

III. ADEQUATE SERVICES.

Finding required before new common carrier service justified. No finding of public con-

venience and necessity for new common carrier service is justified unless present service offered in the area is inadequate. *Colo. Transp. Co. v. Pub. Utils. Comm'n*, 158 Colo. 136, 405 P.2d 682 (1965).

Test of service is not perfection. When a common carrier renders services to numerous customers in a wide territory undoubtedly some

dissatisfaction will arise and some legitimate complaints result; but for a new service to be authorized in the area already served by a common carrier, inadequacy of the present service must be shown to be substantial. *Colo. Transp. Co. v. Pub. Utils. Comm'n*, 158 Colo. 136, 405 P.2d 682 (1965).

40-3-102. Regulation of rates - correction of abuses. The power and authority is hereby vested in the public utilities commission of the state of Colorado and it is hereby made its duty to adopt all necessary rates, charges, and regulations to govern and regulate all rates, charges, and tariffs of every public utility of this state to correct abuses; to prevent unjust discriminations and extortions in the rates, charges, and tariffs of such public utilities of this state; to generally supervise and regulate every public utility in this state; and to do all things, whether specifically designated in articles 1 to 7 of this title or in addition thereto, which are necessary or convenient in the exercise of such power, and to enforce the same by the penalties provided in said articles through proper courts having jurisdiction; except that nothing in this article shall apply to municipal natural gas or electric utilities for which an exemption is provided in the constitution of the state of Colorado, within the authorized service area of each such municipal utility except as specifically provided in section 40-3.5-102.

Source: L. 13: p. 469, § 14. C.L. § 2925. CSA: C. 137, § 15. CRS 53: § 115-3-2. C.R.S. 1963: § 115-3-2. L. 83: Entire section amended, p. 1552, § 1, effective June 17.

Cross references: For definition of a public utility, see § 40-1-103; for penalties for violation, see article 7 of this title.

ANNOTATION

Law reviews. For article, "Coal Mining a Public Utility", see 12 *Dicta* 267 (1935). For article, "Retail Competition in the Electric Utility Industry", see 60 *Den. L.J.* 1 (1982).

Commission has two duties. The commission has been charged with the duty to carry out its mission in two areas, to wit: To protect the public and to prevent destructive rate-making which could result in nonavailability of the service to the public. *Consolidated Freightways Corps. v. Pub. Utils. Comm'n*, 158 Colo. 239, 406 P.2d 83 (1965).

Duty of commission to protect public interest. Under the Colorado statutory scheme, the public utilities commission is charged with protecting the interest of the general public from excessive, burdensome rates. *Pub. Utils. Comm'n v. District Court*, 186 Colo. 278, 527 P.2d 233 (1974).

The commission has a general responsibility to protect the public interest regarding utility rates and practices. *City of Montrose v. Pub. Utils. Comm'n*, 629 P.2d 619 (Colo. 1981).

A primary purpose of utility regulation is to insure that the rates charged are not excessive or unjustly discriminatory. *Cottrell v. City & County of Denver*, 636 P.2d 703 (Colo. 1981).

Preferential rate-making restricted. Although the public utilities commission has been

granted broad rate-making powers by art. XXV, Colo. Const., the commission's power to effect social policy through preferential rate-making is restricted by § 40-3-106 (1) and this section, no matter how deserving the group benefiting from the preferential rate may be. *Mountain States Legal Found. v. Pub. Utils. Comm'n*, 197 Colo. 56, 590 P.2d 495 (1979).

Right of utility customer to receive service is not absolute right, but is a qualified right. The right is dependent upon payment for the service and product provided. The continuation of service during a dispute is dependent upon either the posting of what is, in effect, an indemnity bond or the assertion of a well-founded claim that would justify the customer's refusal to pay for the service which was rendered. *Denver Welfare Rights Org. v. Pub. Utils. Comm'n*, 190 Colo. 329, 547 P.2d 239 (1976).

Commission's power to impose accelerated depreciation on utility. The public utilities commission not only has the power but also the obligation to impute a method of depreciation which will reasonably permit a substantial saving to ratepayers. *Colo. Mun. League v. Pub. Utils. Comm'n*, 172 Colo. 188, 473 P.2d 960 (1970).

Power of the commission as to rates under this section is not confined to regulation of

those which are discriminatory or preferential, but extends to those which are unreasonable; that upon any such complaint the commission is authorized to fix a reasonable rate of charge to be thereafter observed by the carrier. *Consumers' League v. Colo. & S. Ry.*, 53 Colo. 54, 125 P. 577, (1912).

Rates set by commission for interLATA access charge and intraLATA toll rates do not unreasonably discriminate against resellers and result in "price squeeze". When establishing an intraLATA toll rate, the commission is under no obligation to require a Bell operating company to impute to itself an access charge similar to one imposed on resellers. Wholesale rates approved by commission and charged to resellers for intraLATA toll services are not discriminatory, even though in some mileage bands and at some times of the day such rates exceed the retail rates charged by the Bell operating company to its own customers. *Consumer Counsel v. P.U.C.*, 786 P.2d 1086 (Colo. 1990) (decided under the "Intrastate Telecommunication Service Act", § 40-15-101 et seq., as it existed prior to its 1987 repeal and reenactment, which act provided that intraLATA toll services were governed by the doctrine of regulated monopoly and which did not provide for a prohibition against discriminatory charges).

Although the commission has broad power to accomplish its legislative and constitutional purpose, its powers are restricted by the statutory provisions governing utilities, and the commission's delegated powers do not extend generally to adjudicatory matters. *Colo. Office of Consumer Counsel v. Mountain States Tel. & Tel.*, 816 P.2d 278 (Colo. 1991).

Making of rates to govern public utilities is legislative and not judicial function; in this state, that legislative function has been delegated to the public utilities commission. *City & County of Denver v. People ex rel. Pub. Utils. Comm'n*, 129 Colo. 41, 226 P.2d 1105 (1954); *Mountain States Tel. & Tel. Co. v. Pub. Utils. Comm'n*, 176 Colo. 457, 491 P.2d 582 (1971); *Pub. Utils. Comm'n v. District Court*, 186 Colo. 278, 527 P.2d 233 (1974); *City of Montrose v. Pub. Utils. Comm'n*, 629 P.2d 619 (Colo. 1981); *Office of Consumer Counsel v. Pub. Serv. Co.*, 877 P.2d 867 (Colo. 1994); *Pub. Serv. Co. v. Pub. Utils. Comm'n*, 26 P.3d 1198 (Colo. 2001).

Judiciary must refrain from any semblance of rate-making. *Pub. Utils. Comm'n v. District Court*, 186 Colo. 278, 527 P.2d 233 (1974).

Federal courts are prevented from intervening in state rate-making process even though the matter might be repugnant to the federal constitution, unless the remedy in state courts is inadequate, by the so-called Johnson Act of 1934, 28 U.S.C. § 1342 (4). *Mountain States Tel. & Tel. Co. v. Pub. Utils. Comm'n*, 345 F. Supp. 80 (D. Colo. 1972).

Municipality furnishing electricity to its citizens has sole power to fix rates. Where a municipality as the owner of a public utility furnishes electricity to its citizens within the municipal limits, the city itself, through its proper officers, possesses the sole power of fixing the rates to be charged for such utility. *City of Lamar v. Town of Wiley*, 80 Colo. 18, 248 P. 1009 (1926).

Plant owned and operated by consumers can never become monopoly, nor can it be instrument of oppression; hence there is no room for the exercise of the police power. *Town of Holyoke v. Smith*, 75 Colo. 286, 226 P. 158 (1924).

Where people are dealing with privately owned public utility, there is good reason for a commission which shall act in the interest of the public, to avoid the possibility of oppression. *Willison v. Cooke*, 54 Colo. 320, 130 P. 828 (1913).

Commission has power to fix rates of municipally owned utility furnishing services beyond territorial boundaries. When a municipality, whether in its operation of its own public utility it acts in its municipal or governmental, or in its proprietary, or quasi-public, capacity, or partly in one and partly in the other, and as such furnishes public service to its own citizens and in connection therewith supplies its products to consumers outside of its own territorial boundaries, the function it thereby performs, whatever its nature may be, in supplying outside consumers with a public utility, is and should be attended with the same conditions and be subject to the same control and supervision that apply to a private public utility owner who furnishes like service. *City of Lamar v. Town of Wiley*, 80 Colo. 18, 248 P. 1009 (1926).

Commission has no jurisdiction where charter gave city control of rates prior to home rule amendment. When a city has adopted a charter which gives that city control of the rates to be charged by public utilities within its limits, before the passage of the home-rule amendment, the state commission has no control of rates within that city. *City & County of Denver v. Mountain States Tel. & Tel. Co.*, 67 Colo. 225, 184 P. 604 (1919), appeal dismissed, 251 U.S. 545, 40 S. Ct. 219, 64 L. Ed. 407 (1920); *City of Pueblo v. Pub. Utils. Comm'n*, 68 Colo. 155, 187 P. 1026 (1920); *Atchison, T. & S. F. Ry. v. Pub. Utils. Comm'n*, 68 Colo. 92, 188 P. 747 (1920); *City of Ft. Collins v. Pub. Utils. Comm'n*, 69 Colo. 554, 195 P. 1099 (1921).

Commission has no jurisdiction where charter gives city control of rates subsequent to home rule amendment. The state public utilities commission has no authority to regulate telephone rates in a city, which, after the passage of the home rule amendment, adopted a charter giving it control of the rates to be charged by

public utilities within its limits. *City of Ft. Collins v. Pub. Utils. Comm'n*, 69 Colo. 554, 195 P. 1099 (1921).

Commission has power to permanently fix rates to be charged by private owner for furnishing public utility, regardless of any contract entered into between the parties as to such rates. *Denver & S. Pac. Ry. v. City of Englewood*, 62 Colo. 229, 161 P. 151, (1916), appeal dismissed, 248 U.S. 294, 39 S. Ct. 100, 63 L. Ed. 253 (1919); *Ohio & Colo. Smelting & Ref. Co. v. Pub. Utils. Comm'n*, 68 Colo. 137, 187 P. 1082 (1920); *City of Lamar v. Town of Wiley*, 80 Colo. 18, 248 P. 1009 (1926).

Public utilities commission is clothed with general powers to regulate and control carriers for hire within state. *Lane v. Pub. Utils. Comm'n*, 152 Colo. 335, 381 P.2d 818 (1963).

In the area of utility regulation, the commission has broadly based authority to do whatever it deems necessary or convenient to accomplish the legislative functions delegated to it. *City of Montrose v. Pub. Utils. Comm'n*, 629 P.2d 619 (Colo. 1981).

General assembly has vested commission with considerable discretion in its choice of the means used to fix rates. *Colo. Ute Elec. Ass'n v. Pub. Utils. Comm'n*, 198 Colo. 534, 602 P.2d 861 (1979).

General assembly has declared necessity and duty and left to commission determination of rate that is fair to the public and sufficiently compensatory to the utility to insure a fair return on its investments. *Consol. Freightways Corps. v. Pub. Utils. Comm'n*, 158 Colo. 239, 406 P.2d 83 (1965).

Commission unlawfully delegated its rate-making obligation to utility when it conferred upon it the discretion to determine whether or not a developer should receive a refund of the underground component of its cash advances and whether to charge underground customers higher rates. *Baca Grande Corp. v. Pub. Utils. Comm'n*, 190 Colo. 201, 544 P.2d 977 (1976).

Rate-making is not exact science, but a legislative function involving many questions of judgment and discretion, and that judgment or discretion must be based upon evidentiary facts, calculations, known factors, relationship between known factors, and adjustments which may affect the relationship between known factors. *Colo. Ute Elec. Ass'n v. Pub. Utils. Comm'n*, 198 Colo. 534, 602 P.2d 861 (1979); *City of Montrose v. Pub. Utils. Comm'n*, 629 P.2d 619 (Colo. 1981); *Consumer Counsel v. P.U.C.*, 786 P.2d 1086 (Colo. 1990); *Integrated Network Servs. v. PUC*, 875 P.2d 1373 (Colo. 1994); *Pub. Serv. Co. v. Pub. Utils. Comm'n*, 26 P.3d 1198 (Colo. 2001).

Commission not bound by prior decisions. Because of the legislative character of rate-making, the commission is not bound by its prior decisions or by any doctrine similar to stare

decisis. *Colo. Ute Elec. Ass'n v. Pub. Utils. Comm'n*, 198 Colo. 534, 602 P.2d 861 (1979).

Commission functions in "zones of reasonableness". The fixing of rates is a matter largely of prophecy, and because of this fact, the commission in carrying out its functions necessarily deals in what are called "zones of reasonableness", the result of which is that it has some latitude in exercising this most difficult function. *Mountain States Tel. & Tel. Co. v. Pub. Utils. Comm'n*, 345 F. Supp. 80 (D. Colo. 1972).

Regulatory agency has some flexibility in fixing rate of return — its decision being subject to existing economic conditions. *Mountain States Tel. & Tel. Co. v. Pub. Utils. Comm'n*, 345 F. Supp. 80 (D. Colo. 1972).

Reasonable rate determined by result reached. It is the result reached, not the method employed, which determines whether a rate is just and reasonable. *City of Montrose v. Pub. Utils. Comm'n*, 629 P.2d 619 (Colo. 1981).

Rate of return can be reasonable at one time and too high or low at another depending on economic conditions. *Mountain States Tel. & Tel. Co. v. Pub. Utils. Comm'n*, 345 F. Supp. 80 (D. Colo. 1972).

Rate of return is ratio. The rate of return involved in public utility rate proceedings is the ratio between net operating revenues and rate base. *Mountain States Tel. & Tel. Co. v. Pub. Utils. Comm'n*, 182 Colo. 269, 513 P.2d 721 (1973).

Rate of return and ratio are criteria for determining what is or is not confiscation of a company's property. *Mountain States Tel. & Tel. Co. v. Pub. Utils. Comm'n*, 182 Colo. 269, 513 P.2d 721 (1973).

Rates which have turned out to be less than commission's projections are not per se confiscatory. *Mountain States Tel. & Tel. Co. v. Pub. Utils. Comm'n*, 345 F. Supp. 80 (D. Colo. 1972).

Cost of capital must be given attention as one of the factors in determining what is the appropriate rate of return. *Mountain States Tel. & Tel. Co. v. Pub. Utils. Comm'n*, 182 Colo. 269, 513 P.2d 721 (1973).

Portion of capital structure included in calculating rates. It is proper and within the public utilities commission's authority to include only that portion of the capital structure which finances the rate base in the calculation of just and reasonable rates. *Peoples Natural Gas Div. of N. Natural Gas Co. v. Pub. Utils. Comm'n*, 193 Colo. 421, 567 P.2d 377 (1977).

Commission's duty to avail ratepayers of economies ignored by management. When management abuses its managerial discretion to the detriment of its customers, the regulatory commissions have a duty to declare the abuse and make such orders as will give to ratepayers the advantage of those economies of which management has failed to avail itself. *Colo.*

Mun. League v. Pub. Utils. Comm'n, 172 Colo. 188, 473 P.2d 960 (1970).

Gas cost adjustment authorized. The public utilities commission has authority to permit cost adjustments such as the gas cost adjustment as part of its wide discretion to govern and regulate the rates of public utilities in this state. Pub. Serv. Co. v. Pub. Utils. Comm'n, 644 P.2d 933 (Colo. 1982).

Such adjustment did not constitute retroactive rate making. Colo. Energy Advocacy v. Pub. Serv. Co., 704 P.2d 298 (Colo. 1985).

Because the commission explicitly considers the heating content of natural gas when setting rates, a deceptive trade practice claim concerning a utility's alleged misrepresentations about the heating content of natural gas is within the commission's exclusive jurisdiction, and the plaintiff's failure to exhaust its administrative remedies mandates dismissal of the claim. City of Aspen v. Kinder Morgan, Inc., 143 P.3d 1076 (Colo. App. 2006).

Public utilities law forbids estoppel of public utility from collecting established rate. Goddard v. Pub. Serv. Co., 43 Colo. App. 77, 599 P.2d 278 (1979).

Utilities law applies to contracts entered into by public utility corporation with municipality as well as with individuals and private corporations. City of Lamar v. Town of Wiley, 80 Colo. 18, 248 P. 1009 (1926).

Commission has the power to initiate investigations into excessive charges and to award reparations under this section, and § 40-6-119 concerning complaints made to the commission, including a statute of limitations therein, is not applicable to complaints by the commission on its own motion. Peoples Natural Gas Div. v. P.U.C., 698 P.2d 255 (Colo. 1985).

Commission is empowered to fashion remedy to correct a statutory violation of the requirement that a utility receive commission approval prior to the transfer of utility's assets. Mountain States Tel. & Tel. v. P.U.C., 763 P.2d 1020 (Colo. 1988).

Order directing utility to reacquire assets transferred without required commission approval was appropriate and will be given great deference in light of the commission's special expertise in regulation of utilities. Mountain States Tel. & Tel. v. P.U.C., 763 P.2d 1020 (Colo. 1988).

Inclusion of a merger savings adjustment and an adjustment reflecting the transition from one accounting method to another was within the commission's authority under this section. Pub. Serv. Co. v. Pub. Utils. Comm'n, 26 P.3d 1198 (Colo. 2001).

It is within power of commission to pierce corporate structures of corporations which also operate nonutility divisions or subsidiaries to impute a capital structure for the utility operation, which is reflective of the capitaliza-

tion actually backing the utility operation. Peoples Natural Gas Div. of N. Natural Gas Co. v. Pub. Utils. Comm'n, 193 Colo. 421, 567 P.2d 377 (1977).

Although the commission has broad power to issue declaratory orders and to initiate various types of proceedings, where a declaratory order is in essence a rule, the commission is bound by the procedural requirements pertaining to rule-making proceedings. Colo. Office of Consumer Counsel v. Mountain States Tel. & Tel., Co., 816 P.2d 278 (Colo. 1991).

One of purposes of this article is to prevent unjust and unreasonable charges and to have the commission investigate such a complaint, and the commission can certainly make a decision, order, or requirement with reference thereto under the express provisions of this section. Consumers' League v. Colo. & S. Ry., 53 Colo. 54, 125 P. 577 (1912).

Public utility must have adequate revenues for operating expenses and to cover the capital costs of doing business. Pub. Utils. Comm'n v. District Court, 186 Colo. 278, 527 P.2d 233 (1974).

The revenues must be sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital. Pub. Utils. Comm'n v. District Court, 186 Colo. 278, 527 P.2d 233 (1974).

Regulation of information included in billings. The commission has authority to regulate the information which public utilities include in their customer billings. City of Montrose v. Pub. Utils. Comm'n, 629 P.2d 619 (Colo. 1981).

Earnings of stockholders are not prime consideration in rate cases. Mountain States Tel. & Tel. Co. v. Pub. Utils. Comm'n, 182 Colo. 269, 513 P.2d 721 (1973).

Establishment of mandatory measured service rates for resellers but allowing other business customers a flat rate option not in violation of this section. Although cost of providing service is the same, the reseller customers are not similarly situated to other business customers because they are in competition with the provider. In addition, because rate is based on actual use, the resellers are not being asked to subsidize other customers. Integrated Network Servs. v. PUC, 875 P.2d 1373 (Colo. 1994).

Commission's discretion whether to award attorneys' fees in own proceeding. The commission has broad constitutional and statutory discretion to determine when attorneys' fees should be awarded in its own proceedings. Colo. Ute Elec. Ass'n v. Pub. Utils. Comm'n, 198 Colo. 534, 602 P.2d 861 (1979).

Commission's standard for determining attorneys' fee or costs award has three criteria: (1) That the representation and expenses incurred relate to general consumer interests; (2) that the testimony, evidence and exhibits provided materially assist the commission in reach-

ing its decision; and (3) that the fees and costs incurred are reasonable. *Colo. Ute Elec. Ass'n v. Pub. Utils. Comm'n*, 198 Colo. 534, 602 P.2d 861 (1979).

Commission has jurisdiction to award reasonable attorney's fees and expenses to successfully protesting municipal league from interest accruing on amount to be refunded to customers. *Mountain States Tel. & Tel. Co. v. Pub. Utils. Comm'n*, 180 Colo. 74, 502 P.2d 945 (1972).

40-3-103. Utilities to file rate schedules - rules. Under such rules as the commission may prescribe, every public utility shall file with the commission, within such time and in such form as the commission may designate, and shall print and keep open to public inspection, schedules showing all rates, tolls, rentals, charges, and classifications collected or enforced, or to be collected and enforced, together with all rules, regulations, contracts, privileges, and facilities that in any manner affect or relate to rates, tolls, rentals, classifications, or service.

Source: L. 13: p. 469, § 15. C.L. § 2926. CSA: C. 137, § 16. CRS 53: § 115-3-3. C.R.S. 1963: § 115-3-3. L. 69: p. 964, § 75. L. 91: Entire section amended, p. 2427, § 1, effective June 8. L. 2006: Entire section amended, p. 1103, § 26, effective August 7. L. 2007: Entire section amended, p. 1244, § 1, effective May 24.

ANNOTATION

Law reviews. For article, "Coal Mining a Public Utility", see 12 *Dicta* 267 (1935). For article, "Retail Competition in the Electric Utility Industry", see 60 *Den. L.J.* 1 (1982).

Tariffs do not rise to the level of statutes even though rate-making through tariffs is a proper delegation of legislative power. *U S West Commc'ns v. City of Longmont*, 948 P.2d 509 (Colo. 1997).

Standard principles of statutory construction apply to the interpretation of a tariff. *Safehouse Progressive Alliance for Nonviolence, Inc. v. Qwest Corp.*, 174 P.3d 821 (Colo. App. 2007).

Tariff requiring a municipality to pay relocation costs does not take precedence over a contrary municipal charter or ordinance. *U S West Commc'ns v. City of Longmont*, 948 P.2d 509 (Colo. 1997).

Rates must be filed in order that they may be of public record and be complained against by any person aggrieved thereby. *Intermountain Rural Elec. Ass'n v. Colo. Cent. Power Co.*, 322 F.2d 516 (10th Cir. 1963).

Under the filed rate doctrine, customers are charged with notice not only of the rates charged under the tariffs but also of other terms pertaining to the carrier's liability and other issues and may not bring an action against a carrier that would invalidate, alter, or add to the

Applied in *Shoemaker v. Mountain States Tel. & Tel. Co.*, 38 Colo. App. 321, 559 P.2d 721 (1976); *Mountain States Tel. & Tel. Co. v. Pub. Utils. Comm'n*, 195 Colo. 130, 576 P.2d 544 (1978); *City of Loveland v. Pub. Utils. Comm'n*, 195 Colo. 298, 580 P.2d 381 (1978); *Pollard Contracting Co. v. Pub. Utils. Comm'n*, 644 P.2d 7 (Colo. 1982).

terms of the filed tariff. *Safehouse Progressive Alliance for Nonviolence, Inc. v. Qwest Corp.*, 174 P.3d 821 (Colo. App. 2007).

Rights as defined by the tariff cannot be varied or enlarged by either contract or tort of the carrier, thus, a common-law claim that is inconsistent with the terms of a filed tariff is barred. *Safehouse Progressive Alliance for Nonviolence, Inc. v. Qwest Corp.*, 174 P.3d 821 (Colo. App. 2007).

Filing and publication of tariff by motor carrier is essential to establish tariff and put it in force: Publication is required for the benefit and advantage of the public. *Reed v. United States Vanadium Corp.*, 138 F.2d 846 (10th Cir. 1943).

Proposed schedule submitted with application is not sufficient filing. Proposed schedules of rates filed with application for certificate of public convenience and necessity to operate a motor carrier and with application for transfer of certificate were not filed and published in a manner which constituted them a legal tariff. *Reed v. United States Vanadium Corp.*, 138 F.2d 846 (10th Cir. 1943).

Applied in *City of Loveland v. Pub. Utils. Comm'n*, 195 Colo. 298, 580 P.2d 381 (1978); *People v. Mingo*, 196 Colo. 315, 584 P.2d 632 (1978).

40-3-103.5. Medical exemption - tiered electricity rates - rules. The commission may adopt rules creating an exemption from any tiered electricity rate plan based on a customer's medical condition or use of an essential life support device.

Source: L. 2011: Entire section added, (SB 11-087), ch. 80, p. 218, § 1, effective March 29.

40-3-104. Changes in rates - notice. (1) (a) In the case of a public utility other than a rail carrier, subject to the provisions of paragraph (c) of this subsection (1), no change shall be made by any public utility in any rate, fare, toll, rental, charge, or classification or in any rule, regulation, or contract relating to or affecting any rate, fare, toll, rental, charge, classification, or service or in any privilege or facility, except after thirty days' notice to the commission and the public. Notwithstanding the provisions of this paragraph (a), changes in intrastate telecommunications services which have been determined by the commission to be competitive in nature, pursuant to the provisions of article 15 of this title, shall not be subject to any notice requirement, including, but not limited to, any requirement in this section whether or not denoted as a notice requirement.

(b) Repealed.

(c) (I) Such notice shall be given by filing with the commission and keeping open for public inspection new schedules stating plainly the changes to be made in the schedules then in force and the time when the changes will go into effect. Transportation and water utilities may be required to give additional notice in a manner and form set forth by commission order or commission rules. For public utilities other than transportation and water utilities, additional notice shall be required prior to an increase or other change in any rate, fare, toll, rental, charge, classification, or service and may be made, at the option of the public utility, by any of the following methods:

(A) Publication of a notice in each newspaper of general circulation in each county in which the public utility provides service, which notice shall be four columns wide and eleven inches high stating plainly the changes and shall be published once each week for two successive weeks during the first twenty days of the thirty-day period prior to the effective date of the increase or change. If notice is given by publication, public utilities other than those providing intrastate telecommunications services pursuant to section 40-15-104 (1) shall also be required to include, with each regular billing statement mailed to affected customers during the first regular billing cycle following the filing of the application for an increase or other change, a bill insert containing the same information contained in the notice by newspaper publication.

(B) Mailing of a notice to each affected customer of the public utility during the first twenty days of the thirty-day period prior to the effective date of the increase or change;

(C) Inclusion of an insert in the bill mailed to each affected customer of the public utility during a regular billing cycle not later than the twentieth day of the thirty-day period prior to the effective date of the increase or change; or

(D) Upon application by the public utility, such other manner as the commission may prescribe.

(II) Such additional notice shall be sufficient if it states the total dollar amount sought to be raised by such increased rates or other changes and, if determinable at the time of filing, the average monthly increase, by dollar amount or percentage, to customers served under residential and small business tariffs; states the effective date or dates thereof; contains a general description of the types of services to be affected thereby; informs affected customers, other than residential and small business customers, where they may call to obtain information during the thirty-day period prior to the effective date of the proposed increases or changes concerning how such increases or changes will affect them; and includes the telephone number and address of the commission with instructions regarding the registration of a protest to the proposed increases or changes. Proof of additional notice shall be filed by the public utility with the commission.

(III) Increases in rates, fares, tolls, rentals, or charges associated with electric and gas utility adjustment clauses are subject only to the provisions of subsection (2) of this section.

(IV) For public utilities other than transportation and water utilities, where increases or changes in any rate, fare, toll, rental, charge, classification, or service result from requested increases in revenue requirements and rate restructuring and are contained in a single advice letter or application, the additional notice required under subparagraphs (I) and (II) of this paragraph (c) shall be deemed sufficient if a single notice is given even if more than one proceeding is established by the commission with respect to the increases or changes.

(V) In the case of a public utility that provides regulated intrastate telecommunications services:

(A) Notice of a decrease in a rate or charge for any regulated telecommunications service shall be given by filing with the commission and keeping open for public inspection for a period of fourteen days the new schedule stating plainly the decrease to be made and the time that the decrease will become effective. Such decreases shall not be subject to any additional notice requirements.

(B) Notice of changes in terms and conditions for any regulated telecommunications service shall be given by filing with the commission and keeping open for public inspection for a period of fourteen days the new schedule stating plainly the changes to be made in the terms and conditions and the time that the changes will become effective. Such changes in the terms and conditions shall not be subject to any additional notice requirements unless the commission determines that such additional notice is in the public interest. Any such additional notice shall be given in a manner specified by the commission.

(2) The commission, for good cause shown, may allow changes with less notice than is required by subsection (1) of this section by an order specifying the changes so to be made and the time when they shall take effect and the manner in which they shall be filed and published.

(3) When any change is proposed in any rate, fare, toll, rental, charge, or classification or in any form of contract or agreement or in any rule, regulation, or contract relating to or affecting any rate, fare, toll, rental, charge, classification, or service or in any privilege or facility, attention shall be directed to such change on the schedule filed with the commission immediately preceding or following the item.

(4) and (5) Repealed.

Source: L. 13: p. 470, § 16. C.L. § 2927. CSA: C. 137, § 17. CRS 53: § 115-3-4. C.R.S. 1963: § 115-3-4. L. 84: Entire section amended, p. 1036, § 2, effective July 1. L. 85: (1)(a) and (1)(c) amended, p. 1296, § 1, effective May 19. L. 2000: (1)(b), (4), and (5) repealed, p. 215, § 1, effective March 29. L. 2002: (1)(c)(V) added, p. 200, § 2, effective August 7.

Cross references: For the legislative declaration contained in the 2002 act enacting subsection (1)(c)(V), see section 1 of chapter 74, Session Laws of Colorado 2002.

ANNOTATION

New rates not invalid. There was no merit to the contention that new rates were invalid because the public utilities commission, in not suspending them, improperly permitted them to go into effect without any hearing. Such discretion is delegated to the public utilities commission by the general assembly in this section, and the discretionary power to suspend is set forth in § 40-6-111. Pub. Utils. Comm'n v. District Court, 186 Colo. 278, 527 P.2d 233 (1974); Office of Consumer Counsel v. P.U.C., 752 P.2d 1049 (Colo. 1988).

The public utilities commission made sufficient findings of fact concerning the circum-

stances and conditions regarding the expedited effective date of proposed tariffs to constitute good cause. Office of Consumer Counsel v. P.U.C., 752 P.2d 1049 (Colo. 1988).

Subsection (2) of this section allows the public utilities commission to permit a proposed tariff to go into effect without satisfying the 30-day notice requirement of subsection (1) (a) only upon a showing of good cause and not a showing of extraordinary circumstances, either unique or urgent. Office of Consumer Counsel v. P.U.C., 752 P.2d 1049 (Colo. 1988).

Applied in City of Loveland v. Pub. Utils. Comm'n, 195 Colo. 298, 580 P.2d 381 (1978);

People v. Marshall, 196 Colo. 381, 586 P.2d 41 (1978); Pub. Serv. Co. v. Pub. Utils. Comm'n, 653 P.2d 1117 (Colo. 1982).

40-3-104.3. Manner of regulation - competitive responses. (1) (a) Upon application by any public utility providing electric, natural gas, or steam service, the commission shall authorize such public utility to provide utility services to a specific customer or potential customer by contract without reference to its tariffs on file with the commission if the commission finds that:

(I) For contracts with a specific customer or potential customer involving electric and steam service:

(A) The price of any such service is not below that service's variable cost;

(B) The customer, or potential customer, has expressed its intention to decline or discontinue, or partially discontinue, service, to provide its own service, or to pursue the purchase of alternate services from another provider;

(C) The approval of the application will not adversely affect the remaining customers of the public utility; and

(D) The approval of the application is in the public interest;

(II) For contracts with existing customers involving natural gas service:

(A) The customer has the ability to provide its own service or has competitive alternatives available from other providers of the same or substitutable service, except from another public utility providing or proposing to provide the same type of service;

(B) The customer will discontinue using the services of the public utility if the authorization is not granted;

(C) Approval of the application will not as adversely affect the remaining customers of the public utility as would the alternative;

(D) The price of any such service provided pursuant to this subparagraph (II) shall be justified and shall not be less than the marginal cost of the service to the public utility. If the price is less than marginal cost, this shall be deemed to be an illegal restraint of trade subject to the provisions of article 4 of title 6, C.R.S.; and

(E) The approval of the application is in the public interest.

(b) Following a notice period of five days after the filing of an application under this section, the commission shall approve or deny the application within thirty days. All applications filed with the commission pursuant to this section shall be placed at the head of the commission's docket and shall be disposed of promptly within the time periods set forth in this paragraph (b); except that, for good cause shown, the commission may extend the period in which it must act for an additional fifteen days, or, in extraordinary circumstances, including but not limited to the existence of numerous pending applications under this section, the commission may extend the period in which it must act for an additional thirty days beyond the fifteen days provided for in this paragraph (b). Whenever such application is continued as provided in this paragraph (b), the commission shall enter an order making such continuance and stating fully the facts necessitating the continuance. If the commission has not approved or denied any such application within the time periods set forth in this paragraph (b), the application shall be deemed approved. If the commission denies any such application for approval within the permitted period, the subject contract shall not become effective. Any contract submitted pursuant to this section shall be filed under seal and treated as confidential by the commission; except that at the time the applicant files an application or contract with the commission, the applicant shall also furnish a copy of the application to any public utility then providing electric, gas, or steam service in the state of Colorado to the customer, and also furnish a copy to the office of consumer counsel, and the office of consumer counsel shall also treat said contract as confidential.

(c) An application filed by a public utility pursuant to this section shall contain the name of the customer, a description of the services proposed to be provided under contract, evidence that the requirements of paragraph (a) of this subsection (1) have been met, and any additional information required by the commission. The commission may dismiss an

application if the applicant fails to provide information necessary to enable the commission to make the findings required by paragraph (a) of this subsection (1).

(d) (Deleted by amendment, L. 92, p. 2138, § 1, effective April 23, 1992.)

(e) Within ten days after the execution of such contract, the public utility shall file with the commission under seal and as a confidential document the final contract or other description of the price and terms of service, together with any additional information required by the commission. The applicant shall also furnish a copy of such information to the office of consumer counsel, who shall treat the information as confidential. The commission shall have no authority to disapprove the contract if the contract complies with the conditions contained in paragraph (a) of this subsection (1), but the commission may consider the contract for general regulatory purposes and to ensure compliance with the requirements of this section.

(2) (a) For contracts involving electric and steam service, at the time of any proceeding in which a utility's overall rate levels are determined, the commission shall specify a fully distributed cost methodology to be used to segregate rate base, expenses, and revenues associated with utility service provided by contract pursuant to this section from other regulated utility operations. For contracts involving electric and steam service, if revenues from a service provided pursuant to this section are less than the cost of service as determined by the fully distributed cost methodology specified by the commission, the rates of other regulated utility operations may not be increased to recover such difference between costs and revenues.

(b) For contracts involving natural gas service, the commission may require a public utility to segregate investments, expenses, and revenues associated with utility service provided pursuant to subparagraph (II) of paragraph (a) of subsection (1) of this section to ensure that such services are not subsidized by revenues from other utility operations. If the commission requires such segregation of such investment and expenses, it shall specify a fully distributed cost allocation methodology.

(3) (a) This section shall neither enlarge nor diminish the rights and obligations of a public utility operating under a certificate issued by the commission to serve customers within a territory pursuant to the provisions of article 3.5, 5, or 9.5 of this title.

(b) Nothing in this section shall be construed to permit any public utility to provide electric, natural gas, or steam service to a customer of another public utility located in or for use in the service territory of such other public utility providing or proposing to provide the same type of service.

(4) (a) The commission has the right to inspect the books and records of any affiliate of a public utility to the extent that the affiliate uses any plant, or incurs any cost, or provides any service or product which is joint and common to the provision of public utility services and products subject to the jurisdiction of the commission. Upon application and for good cause shown, the commission may enter an appropriate protective order which directs the manner in which proprietary information shall be treated.

(b) For purposes of this subsection (4), unless the context otherwise requires, "affiliate of a public utility" means a subsidiary of a public utility, a parent corporation of a public utility, a joint venture organized as a separate corporation or partnership to the extent of the individual public utility's involvement with the joint venture, or a subsidiary of a parent corporation of a public utility.

(5) Nothing in this section shall limit or restrict the commission's authority to regulate rates and charges, correct abuses, or prevent unjust discrimination except as specifically provided in this section.

Source: L. 89: Entire section added, p. 1535, § 1, effective July 1. L. 92: Entire section amended, p. 2138, § 1, effective April 23.

ANNOTATION

This section provides the means by which a regulated electric, gas, or steam utility may retain existing customers who are contemplating

reduction or elimination of their power purchases from it. *Pub. Serv. Co. of Colo. v. Trigen-Nations Energy Co.*, 982 P.2d 316 (Colo. 1999).

The PUC's authority to disapprove a special rate agreement under this section is limited. Pub. Serv. Co. of Colo. v. Trigen-Nations Energy Co., 982 P.2d 316 (Colo. 1999).

Confidentiality of customer's name and other contents of application may be warranted, in view of the purposes served by this section. Pub. Serv. Co. of Colo. v. Trigen-Nations Energy Co., 982 P.2d 316 (Colo. 1999).

PUC has authority to issue a protective order preserving confidentiality of the con-

tents of an application under this section. Pub. Serv. Co. of Colo. v. Trigen-Nations Energy Co., 982 P.2d 316 (Colo. 1999).

Potential competitors of applicant who were not currently serving applicant's customers were not entitled to intervene and thereby gain access to information, including prospective customers' names, contained in application. Pub. Serv. Co. of Colo. v. Trigen-Nations Energy Co., 982 P.2d 316 (Colo. 1999).

40-3-104.4. Simplified regulatory treatment for small, privately owned water companies. The commission, with due consideration to public interest, quality of service, financial condition, and just and reasonable rates, shall grant regulatory treatment that is less comprehensive than otherwise provided for under this article to small, privately owned water companies that serve fewer than one thousand five hundred customers. The commission, when considering policy statements and rules, shall balance reasonable regulatory oversight with the cost of regulation in relation to the benefit derived from such regulation.

Source: L. 2001: Entire section added, p. 1469, § 1, effective August 8.

40-3-104.5. Special provisions for rail carrier rate increases. Notwithstanding section 40-3-105 and any other provision of this title to the contrary, the commission shall not exercise any jurisdiction over rates with respect to intrastate rail carriers.

Source: L. 84: Entire section added, p. 1037, § 3, effective July 1. **L. 2000:** Entire section amended, p. 215, § 2, effective March 29.

40-3-105. Free and reduced service or transportation prohibited - exceptions. (1) No public utility shall, directly or indirectly, issue, give, or tender any free service, ticket, frank, free pass, or other gratuity of services or any free or reduced rate transportation for passengers or property between points within this state unless a tariff so providing is first filed with and approved by the commission.

(2) Except as otherwise provided in this section, no public utility shall charge, demand, collect, or receive a greater or lesser or different compensation for any product or commodity furnished or to be furnished, or for any service rendered or to be rendered, than the rates, tolls, rentals, and charges applicable to such product or commodity or service as specified in its schedules on file and in effect at the time, nor shall any such public utility refund or remit, directly or indirectly, in any manner or by any device, any portion of the rates, tolls, rentals, and charges so specified, nor extend to any corporation or person any form of contract or agreement or rule or regulation or any facility or privilege except those which are regularly and uniformly extended to all corporations and persons; but the commission may by rule or order establish such exceptions from the operation of this prohibition as it may consider just and reasonable as to each public utility.

(3) (a) Nothing in this article shall prohibit or restrict any public utility from furnishing its service, product, or commodity to, or the receiving of its service, product, or commodity by, its employees, pensioners, officers, directors, or board members at no charge or at charges less than those prescribed in the utility's published schedules or tariffs.

(b) No revenue shall accrue or be credited in the accounts of such utility with respect to such service, product, or commodity furnished at no charge nor with respect to any amounts by which charges for such service, product, or commodity are less than those prescribed in the utility's published schedules or tariffs.

Source: L. 13: p. 470, § 17. **C.L.** § 2928. **L. 27:** p. 249, § 1. **CSA:** C. 137, § 18. **L. 41:** p. 599, § 1. **CRS 53:** § 115-3-5. **C.R.S. 1963:** § 115-3-5. **L. 69:** p. 931, § 14. **L. 73:** p. 1143, § 1. **L. 84:** (2) amended, p. 1039, § 4, effective July 1. **L. 2002:** (2) amended, p. 1033, § 69, effective June 1.

Cross references: For penalties for violations, see article 7 of this title.

ANNOTATION

Utility regulation is arguably designed to protect against unreasonably low rates. *Cottrell v. City & County of Denver*, 636 P.2d 703 (Colo. 1981).

Public utilities law forbids estoppel of public utility from collecting established rate. *Goddard v. Pub. Serv. Co.*, 43 Colo. App. 77, 599 P.2d 278 (1979).

Ignorance of misquotation of rates is not excuse for paying or charging either less or more than rate filed. *Denver & R. G. W. R. R. v. Marty*, 143 Colo. 496, 353 P.2d 1095 (1960).

Purpose of section. This section, like the federal statute 49 U.S.C., section 6 (7), seeks to promote uniform and nondiscriminatory freight rates. *Denver & R. G. W. R. R. v. Marty*, 143 Colo. 496, 353 P.2d 1095 (1960).

This section prohibits rebates regardless of legal theory upon which they are based. *Denver & R. G. W. R. R. v. Marty*, 143 Colo. 496, 353 P.2d 1095 (1960).

Applied in *People v. Marshall*, 196 Colo. 381, 586 P.2d 41 (1978).

40-3-106. Advantages prohibited - graduated schedules - consideration of household income and other factors - definitions. (1) (a) Except when operating under paragraph (c) or (d) of this subsection (1) or pursuant to article 3.4 of this title, no public utility, as to rates, charges, service, or facilities, or in any other respect, shall make or grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage. No public utility shall establish or maintain any unreasonable difference as to rates, charges, service, facilities, or in any respect, either between localities or as between any class of service. The commission has the power to determine any question of fact arising under this section.

(b) Repealed.

(c) A local exchange provider, as defined in section 40-15-102 (18), may enter into a contract, when necessary, specifying non-cost-based rates and conditions particular to that contract with one or more purchasers of services for applications of interactive video technology for purposes of distance learning, video arraignment of defendants in criminal cases, or examination, diagnosis, or treatment of patients in the course of medical practice. When an application is subject to a bidding process by the end user of the service, the local exchange providers offering component elements of interactive video technology pursuant to this paragraph (c) shall offer the component elements relating to a specific application to a specific end user to all bidders, including themselves, if bidding, at the same rates, terms, and conditions. This exception shall not apply to any other regulated service. A provider other than a local exchange provider may offer such interactive video services if such services are provided under the same terms and conditions as specified in this paragraph (c). Each contract entered into under this paragraph (c) shall be filed with the commission for information only.

(d) (I) Notwithstanding any provision of articles 1 to 7 of this title to the contrary, the commission may approve any rate, charge, service, classification, or facility of a gas or electric utility that makes or grants a reasonable preference or advantage to low-income customers, and the implementation of such commission-approved rate, charge, service, classification, or facility by a public utility shall not be deemed to subject any person or corporation to any prejudice, disadvantage, or undue discrimination.

(II) As used in this paragraph (d), a "low-income utility customer" means a utility customer who:

(A) Has a household income at or below one hundred eighty-five percent of the current federal poverty line; and

(B) Otherwise meets the eligibility criteria set forth in rules of the department of human services adopted pursuant to section 40-8.5-105.

(III) When considering whether to approve a rate that makes or grants a reasonable preference or advantage to low-income utility customers, the commission shall take into account the potential impact on, and cost-shifting to, utility customers other than low-income utility customers.

(2) Nothing in articles 1 to 7 of this title shall be taken to prohibit a public utility engaged in the production, generation, transmission, or furnishing of heat, light, gas, water, power, or telephone service from establishing a graduated scale of charges subject to the provisions of this title.

(3) Nothing in this section shall prevent the commission from revoking its approval at any time and fixing other rates and charges for the product or commodity or service as authorized by articles 1 to 7 of this title.

(4) The commission shall order a fixed public utility, except a municipally owned utility, to increase its rates only to its customers in a municipality by adding a surcharge to recover the amount such fixed public utility pays to that municipality as a cost of doing business within that municipality under a franchise or pursuant to a license or occupation tax levied by the municipality, so long as the increase in rates by such fixed public utility is pursuant to a method of surcharge approved by the commission. Occupation tax as used in this subsection (4) does not include the employer and employee tax imposed by a municipality for the privilege of employment within that municipality.

(5) Repealed.

Source: L. 13: p. 473, § 18. C.L. § 2929. CSA: C. 137, § 19. CRS 53: § 115-3-6. C.R.S. 1963: § 115-3-6. L. 69: p. 932, § 15. L. 81: (4) and (5) added, p. 1912, § 1, effective July 1. L. 83: (5) repealed, p. 1555, § 3, effective June 17. L. 84: (1) amended, p. 1039, § 5, effective July 1. L. 86: (1)(a) amended, p. 1155, § 2, effective September 1. L. 89: (2) amended, p. 1526, § 8, effective April 12. L. 90: (1)(a) amended, p. 1849, § 51, effective May 31. L. 91: (1)(a) amended, p. 1925, § 57, effective June 1. L. 95: (1)(a) amended and (1)(c) added, p. 245, § 1, effective April 17. L. 2000: (1)(b) repealed, p. 217, § 3, effective March 29. L. 2002: (1)(a) amended, p. 1033, § 70, effective June 1. L. 2007: (1)(a) amended and (1)(d) added, p. 319, § 1, effective April 2. L. 2008: (2) amended, p. 1792, § 6, effective July 1. L. 2010: (1)(d)(II)(A) amended, (HB 10-1422), ch. 419, p. 2124, § 181, effective August 11.

ANNOTATION

Law reviews. For article, "Coal Mining a Public Utility", see 12 Dicta 267 (1935).

Section 25 of article V of the Colorado constitution, which prohibits special legislation, is not violated by the provisions of subsection (4) even though this subsection exempts municipally-owned fixed public utilities and privately-owned nonfixed public utilities from its coverage. *City of Montrose v. Pub. Utils. Comm'n*, 732 P.2d 1181 (Colo. 1987).

Section 38 of article V of the Colorado constitution is not violated by subsection (4) as this statute does not alter a public utility's obligation to pay franchise fees to a municipality which has granted the public utility a franchise. *City of Montrose v. Pub. Utils. Comm'n*, 732 P.2d 1181 (Colo. 1987).

Rates set by commission for interLATA access charge and intraLATA toll rates do not unreasonably discriminate against resellers and result in "price squeeze". When establishing an intraLATA toll rate, the commission is under no obligation to require a Bell operating company to impute to itself an access charge similar to one imposed on resellers. Wholesale rates approved by commission and charged to resellers for intraLATA toll services are not discriminatory, even though in some mileage bands

and at some times of the day such rates exceed the retail rates charged by the Bell operating company to its own customers. *Consumer Counsel v. P.U.C.*, 786 P.2d 1086 (Colo. 1990) (decided under the "Intrastate Telecommunication Service Act", § 40-15-101 et seq., as it existed prior to its 1987 repeal and reenactment, which act provided that intraLATA toll services were governed by the doctrine of regulated monopoly and which did not provide for a prohibition against discriminatory charges).

Specter of discrimination would be raised contrary to subsection (1) if providers of call transfer services that allow a subscriber to place intrastate telephone calls outside of the subscriber's local calling area without incurring long-distance toll charges were allowed to purchase from an exchange tariff rather than an access tariff. *Avicomm, Inc. v. Colo. Pub. Utils. Comm'n*, 955 P.2d 1023 (Colo. 1998).

Reasonable interpretation of state utility law would require a public utility to charge and collect full established charge for transportation of oil from any person liable for the charge and would prevent the utility from canceling the original charge in consideration of a new and different promise to pay. *Empire Petroleum Co. v. Sinclair Pipeline Co.*, 282 F.2d 913 (10th Cir. 1960).

Utility regulation is arguably designed to protect against unreasonably low rates. *Cottrell v. City & County of Denver*, 636 P.2d 703 (Colo. 1981).

Additional charges are proper when additional service rendered, see *Consumers' League v. Colo. & S. Ry.*, 64 Colo. 502, 172 P. 1064 (1918).

Cannot make flat charge that applies through service unrendered. A rule, under this section, eliminating all distinctions between shipments over the line of the carrier, and switching charges, prescribing a uniform rate for all cases, regardless of whether switching is performed or not, is improper and will be condemned. *Consumers' League v. Colo. & S. Ry.*, 64 Colo. 502, 172 P. 1064 (1918).

Preferential rate-making restricted. Although the public utilities commission has been granted broad rate-making powers by art. XXV, Colo. Const., the commission's power to effect social policy through preferential rate-making is restricted by this section and § 40-3-102 no matter how deserving the group benefiting from the preferential rate may be. *Mountain States Legal Found. v. Pub. Utils. Comm'n*, 197 Colo. 56, 590 P.2d 495 (1979).

May compel operation of trains over particular routes. Under this section, the commission has power to direct the railroad company to operate passenger trains over its line to one city, so that any disadvantage imposed upon the inhabitants of another city by the railroad company abandoning its line between that point and yet another city will be removed; provided, of course, the company can not justify its action in abandoning that portion of its road. *Colo. & S. Ry. v. State R. R. Comm'n*, 54 Colo. 64, 129 P. 506 (1912).

May reopen abandoned lines. If the carrier operates its trains over such routes, by reason of a link in its line being abandoned, that unnecessary delays are occasioned, it is not transporting shipments with that degree of diligence which the act requires, and the commission is empowered to direct that it transport freight over the abandoned part of its line, when by so doing shipments will be greatly facilitated, and burdens imposed upon shippers removed, unless the railroad can justify its action in abandoning such part of its line. *Colo. & S. Ry. v. State R. R. Comm'n*, 54 Colo. 64, 129 P. 506 (1912).

This section was intended to apply to intrastate traffic the same wholesome rules and regulations which congress applied to commerce between the states, and to cut up by the roots the entire system of rebates and discriminations in favor of particular localities, special enterprises, or favored corporations, and to put all shippers on an absolute equality. *Union Pac. Ry. v. Goodridge*, 149 U.S. 680, 13 S. Ct. 970, 37 L. Ed. 896 (1893).

Limiting the discretion of the public utilities commission in determining how a privately-owned fixed public utility will be allowed to recover the cost of franchise fees, pursuant to subsection (4), is not a matter within the domain of local self-government and does not fall within the scope of protection of § 35 of article V of the Colorado constitution. *City of Montrose v. Pub. Utils. Comm'n*, 732 P.2d 1181 (Colo. 1987).

Constitutionality of subsection (4). Subsection (4) does not impermissibly impose a new liability upon a city's residents in violation of § 12 of article XV of the Colorado constitution as this section does not require that municipal customers be surcharged for the amount surcharged to and paid by rural customers for franchise fees prior to adoption of this section, and an increase in surcharges after the statutory enactment is not a new liability within the meaning of § 12, article XV. *City of Montrose v. Pub. Utils. Comm'n*, 732 P.2d 1181 (Colo. 1987).

Subsection (4) does not affect either a home rule city's ability to negotiate and grant franchises and to collect franchise fees or a fixed utility's obligation to pay to a municipality the entire amount of the franchise fee negotiated and, therefore, does not violate §§ 4 and 6 of article XX or article XXV of the Colorado constitution. *City of Montrose v. Pub. Utils. Comm'n*, 732 P.2d 1181 (Colo. 1987).

Subsection (4), which requires that a fixed public utility be ordered to increase rates charged customers in a municipality by adding a surcharge to recover the amount paid to the municipality under a franchise or license, does not violate article XXV of the Colorado constitution as said section is a legislative restriction on the authority of the commission as authorized by article XXV. *City of Montrose v. Pub. Utils. Comm'n*, 732 P.2d 1181 (Colo. 1987).

Subsection (4) does not violate the equal protection of the laws. *City of Montrose v. Pub. Utils. Comm'n*, 732 P.2d 1181 (Colo. 1987).

Using the rational basis analysis, the general assembly could have reasonably concluded that subsection (4) would be a disincentive for municipalities to negotiate inflated franchise fees since such a fee will ultimately be paid for by the residents of the municipality. *City of Montrose v. Pub. Utils. Comm'n*, 732 P.2d 1181 (Colo. 1987).

The right of home rule cities to grant franchises is not unconstitutionally interfered with by subsection (4), which results in the customers within a municipality which has granted a franchise to pay the cost of the franchise fee as part of the rates for the service. *City of Montrose v. Pub. Utils. Comm'n*, 732 P.2d 1181 (Colo. 1987).

Establishment of mandatory measured service rates for resellers but allowing other business customers a flat rate option not in

violation of this section. Although cost of providing service is the same, the reseller customers are not similarly situated to other business customers because they are in competition with the provider. In addition, because rate is based on actual use, the resellers are not being asked to

subsidize other customers. Integrated Network Servs. v. PUC, 875 P.2d 1373 (Colo. 1994).

Applied in Shoemaker v. Mountain States Tel. & Tel. Co., 38 Colo. App. 321, 559 P.2d 721 (1976).

40-3-107. Transmission of business of other companies. Every telephone public utility operating in this state shall receive, transmit, and deliver, without discrimination or delay, the conversations and messages of every other telephone public utility with whose line a physical connection may have been made.

Source: L. 13: p. 473, § 19. C.L. § 2930. CSA: C. 137, § 20. CRS 53: § 115-3-7. C.R.S. 1963: § 115-3-7. L. 69: p. 932, § 16. L. 2008: Entire section amended, p. 1792, § 7, effective July 1.

Cross references: For fixing of joint rates, see § 40-4-104.

40-3-107.5. Interconnection with renewable energy cooperatives. Electric utilities shall interconnect with renewable energy cooperatives organized pursuant to section 7-56-210, C.R.S. Every renewable energy cooperative that desires to interconnect its system with any facilities owned or operated by a public utility shall comply with applicable interconnection rules and with reasonable standards and policies related to the reliability of the public utility system. All such standards and policies, as well as all costs for the interconnection, shall be fair, reasonable, and nondiscriminatory to each renewable energy cooperative.

Source: L. 2004: Entire section added, p. 1123, § 4, effective May 27.

40-3-108. Rates for long and short distances. No telephone public utility subject to articles 1 to 7 of this title shall charge or receive any greater compensation in the aggregate for the transmission of any long distance message or conversation for a shorter than for a longer distance over the same line or route in the same direction within this state, the shorter being included within the longer distance, or charge any greater compensation for a through service than the aggregate of the intermediate rates or tolls subject to articles 1 to 7 of this title. Upon application to the commission, a telephone public utility may be authorized by the commission to charge less for a longer than a shorter distance service for the transmission of messages or conversations in special cases, after investigation; and the commission may from time to time prescribe the extent to which such telephone public utility may be relieved from the operation and requirements of this section.

Source: L. 13: p. 473, § 20. C.L. § 2931. CSA: C. 137, § 21. CRS 53: § 115-3-8. C.R.S. 1963: § 115-3-8. L. 69: p. 932, § 17. L. 2008: Entire section amended, p. 1793, § 8, effective July 1.

40-3-109. Street transportation public utility - transfers. Every street transportation public utility shall, upon such terms as the commission finds to be just and reasonable, furnish to its passengers transfers entitling them to one continuous trip in the same general direction over and upon the portions of its lines within the same city and county, city, or town not reached by the originating vehicle.

Source: L. 13: p. 474, § 21. C.L. § 2932. CSA: C. 137, § 22. CRS 53: § 115-3-9. C.R.S. 1963: § 115-3-9. L. 69: p. 933, § 18.

ANNOTATION

Applied in *Denver & S. Pac. Ry. v. City of Englewood*, 62 Colo. 229, 161 P. 151, 4 A.L.R. 956 (1916).

40-3-110. Information furnished commission - reports. Every public utility shall furnish to the commission at such time and in such form as the commission may require a report in which the utility shall specifically answer all questions propounded by the commission upon or concerning which the commission may desire information. The commission has the authority to require any public utility to file monthly reports of earnings and expenses and to file periodical or special or both periodical and special reports concerning any matter about which the commission is authorized by articles 1 to 7 of this title or in any other law to inquire or to keep itself informed or which it is required to enforce. All reports shall be under oath.

Source: L. 13: p. 474, § 22. C.L. § 2933. CSA: C. 137, § 23. CRS 53: § 115-3-10. C.R.S. 1963: § 115-3-10.

Cross references: For duty of common carriers to report accidents, see § 40-9-108.

ANNOTATION

Law reviews. For article, "Extraterritorial Service of Municipally Owned Water Works in Colorado", see 21 Rocky Mt. L. Rev. 56 (1948).

40-3-111. Rates determined after hearing. (1) Whenever the commission, after a hearing upon its own motion or upon complaint, finds that the rates, tolls, fares, rentals, charges, or classifications demanded, observed, charged, or collected by any public utility for any service, product, or commodity, or in connection therewith, including the rates or fares for excursion or commutation tickets, or that the rules, regulations, practices, or contracts affecting such rates, fares, tolls, rentals, charges, or classifications are unjust, unreasonable, discriminatory, or preferential, or in any way violate any provision of law, or that such rates, fares, tolls, rentals, charges, or classifications are insufficient, the commission shall determine the just, reasonable, or sufficient rates, fares, tolls, rentals, charges, rules, regulations, practices, or contracts to be thereafter observed and in force and shall fix the same by order. In making such determination, the commission may consider current, future, or past test periods or any reasonable combination thereof and any other factors which may affect the sufficiency or insufficiency of such rates, fares, tolls, rentals, charges, or classifications during the period the same may be in effect, and may consider any factors which influence an adequate supply of energy, encourage energy conservation, or encourage renewable energy development.

(1.5) (a) If the commission considers environmental effects when comparing the costs and benefits of potential utility resources, it shall also make findings and give due consideration to the effect that acquiring such resources will have on the state's economy and employment, including, but not limited to, the effect on the mining, electric, natural gas, energy efficiency, and renewable resource industries.

(b) If the commission considers factors which encourage renewable energy development, it shall also make findings and give due consideration to the effect of such factors on the utility's ability to recover its capital and operating costs.

(2) (a) The commission has the power, after a hearing upon its own motion or upon complaint, to investigate a single rate, fare, toll, rental, charge, classification, rule, contract, or practice, or the entire schedule of rates, fares, tolls, rentals, charges, classifications, rules, contracts, and practices of any public utility; and to establish new rates, fares, tolls, rentals, charges, classifications, rules, contracts, practices, or schedules, in lieu thereof.

(b) As part of any inquiry or investigation into rate structures of regulated electric

utilities undertaken on or before July 1, 2009, the commission shall consider whether to adopt retail rate structures that enable the use of solar or other renewable energy resources in agricultural applications, including, but not limited to, irrigation pumping.

Source: L. 13: p. 475, § 23. C.L. § 2934. CSA: C. 137, § 24. CRS 53: § 115-3-11. C.R.S. 1963: § 115-3-11. L. 81: (1) amended, p. 1914, § 1, effective July 1. L. 93: (1.5) added, p. 202, § 1, effective March 31. L. 94: (1) and (1.5) amended, p. 611, § 3, effective April 8. L. 2008: (2) amended, p. 1793, § 9, effective July 1.

Cross references: For the legislative declaration contained in the 1994 act amending subsections (1) and (1.5), see section 1 of chapter 102, Session Laws of Colorado 1994.

ANNOTATION

- I. General Consideration.
- II. Investigation of Rates.
- III. Establishing Rates.

I. GENERAL CONSIDERATION.

Law reviews. For article, "May Regulated Utilities Monopolize the Sun?", see 56 Den. L.J. 31 (1979). For article, "Retail Competition in the Electric Utility Industry", see 60 Den. L.J. 1 (1982).

General assembly provided procedural structure. The general assembly clearly intended to place the primary duty and responsibility for the determination of just and reasonable utility rates in the public utilities commission and provided a complete procedural structure for the commission to follow in discharging its function. Pub. Utils. Comm'n v. Northwest Water Corp., 168 Colo. 154, 451 P.2d 266 (1969).

The commission has the duty to examine proposed rates and to determine whether such rates are unjust, unreasonable, discriminatory, or preferential, or in any way violate any provision of law, and if so, to set just and reasonable rates. CF&I Steel, L.P. v. Pub. Utils. Comm'n, 949 P.2d 577 (Colo. 1997).

The commission in investigating a rate is not confined to technical rules of procedure, and, as an investigator, its duty was to ascertain the facts so important and basic in reaching its conclusion. Ohio & Colo. Smelting & Ref. Co. v. Pub. Utils. Comm'n, 68 Colo. 137, 187 P. 1082 (1920).

Review. If the rate of return allowed is just and reasonable, and there is competent evidence to support the finding of the public utilities commission, then a reviewing court may not substitute its judgment for that of the commission. Peoples Natural Gas Div. of N. Natural Gas Co. v. Pub. Utils. Comm'n, 193 Colo. 421, 567 P.2d 377 (1977).

Section 40-6-111 applicable even where existing rates unjust. Section 40-6-111 is to be applied in proceedings in which a tariff for a new rate is filed, even where existing rates are

unjust under this section. Peoples Natural Gas Div. v. Pub. Utils. Comm'n, 197 Colo. 152, 590 P.2d 960 (1979).

Applied in Denver & S. Pac. Ry. v. City of Englewood, 62 Colo. 229, 161 P. 151 (1916).

II. INVESTIGATION OF RATES.

This is the exercise of a very grave and dangerous power and should be asserted with the greatest caution, and the commission by means of every instrumentality at its command should determine with reasonable certainty that the rate fixed in the contract injuriously affects the public welfare. Ohio & Colo. Smelting & Ref. Co. v. Pub. Utils. Comm'n, 68 Colo. 137, 187 P. 1082 (1920).

Exclusion of evidence. Where telephone company offered evidence that customers suffered no excess charges because of purportedly increased costs of doing business, evidence was properly excluded by commission in ordering refund for period during which rate erroneously approved by commission was in effect. Mountain States Tel. & Tel. Co. v. Pub. Utils. Comm'n, 180 Colo. 74, 502 P.2d 945 (1972).

The provisions of subsection (1) allow the commission to consider test year data but does not require the consideration of such data. Office of Consumer Counsel v. P.U.C., 752 P.2d 1049 (Colo. 1988).

III. ESTABLISHING RATES.

Final test is whether rate is just and reasonable and includes the constitutional question of whether the rate order has passed beyond the lowest limit of the permitted zone of reasonableness into the forbidden reaches of confiscation. Pub. Utils. Comm'n v. Nw. Water Corp., 168 Colo. 154, 451 P.2d 266 (1969).

Test of whether value of any given property shall be included in rate base of a public utility is whether it is used and useful in supplying the commodity or service that the utility has undertaken to furnish: If it is used and useful, it is properly included; if not, it must be excluded.

Glenwood Light & Water Co. v. City of Glenwood Springs, 98 Colo. 340, 55 P.2d 1339 (1936).

Portion of capital structure included in calculating rates. It is proper and within the public utilities commission's authority to include only that portion of the capital structure which finances the rate base in the calculation of just and reasonable rates. Peoples Natural Gas Div. of N. Natural Gas Co. v. Pub. Utils. Comm'n, 193 Colo. 421, 567 P.2d 377 (1977).

It is within power of the commission to pierce corporate structures of corporations which also operate nonutility divisions or subsidiaries to impute a capital structure for the utility operation that reflects the capitalization actually backing the utility operation. Peoples Natural Gas Div. of N. Natural Gas Co. v. Pub. Utils. Comm'n, 193 Colo. 421, 567 P.2d 377 (1977).

40-3-112. Commission to provide local government with avoided cost information.

(1) The general assembly hereby finds that it is in the interest of the people of this state to promote the production of energy and the disposal of solid waste in a manner designed to protect the environment; therefore, the general assembly hereby declares that it is the policy of this state to promote the development of systems which generate energy through the burning of solid waste in a manner designed to insure the maintenance of clean air standards.

(2) Prior to the construction of a solid waste-to-energy incineration facility, any unit of local government contemplating construction of such a facility may, by written request, require the commission to calculate the avoided cost to a specified electric utility for the purchase of energy and capacity by said utility from said contemplated facility. Pursuant to such request the utility shall provide the commission with all data necessary to calculate said cost.

(3) As used in this section, "solid waste-to-energy incineration facility" means a facility where flammable waste material is used as a primary fuel for the production of electrical power the total output of which exceeds one hundred kilowatts.

Source: L. 83: Entire section added, p. 1556, § 1, effective June 1.

Cross references: For the authority of counties and municipalities relating to solid waste-to-energy incineration systems, see part 9 of article 20 of title 30 and part 10 of article 15 of title 31.

ANNOTATION

Law reviews. For article, "The Legal Structure and Financing of Waste-to-Energy Projects — Part I", see 14 Colo. Law. 574 (1985).

40-3-113. Rail rates for transportation of recyclable or recycled materials. (Repealed)

Source: L. 84: Entire section added, p. 1040, § 6, effective July 1. **L. 2000:** Entire section repealed, p. 217, § 4, effective March 29.

40-3-114. Cost allocation - effect on competitive markets. The commission shall ensure that regulated electric and gas utilities do not use ratepayer funds to subsidize nonregulated activities.

Source: L. 93: Entire section added, p. 2062, § 13, effective July 1.

40-3-115. Recovery of utility relocation costs. (1) As used in this section, unless the context otherwise requires:

(a) "Political subdivision" means a county, city and county, city, town, home rule city, home rule town, service authority, school district, local improvement district, law enforcement authority, water, sanitation, fire protection, metropolitan, irrigation, drainage, or other

special district, or any other kind of municipal, quasi-municipal, or public organization organized pursuant to law.

(b) "State" means the state government, any state agency, state department, state institution, or state-level authority.

(2) (a) Notwithstanding the provisions of section 40-15-502 (3) (b) (I) to (3) (b) (V), local exchange providers of basic local exchange service subject to regulation pursuant to part 2, part 3, or part 5 of article 15 of this title may request authorization from the commission to recover the actual costs incurred for the relocation of infrastructure or facilities requested by the state or a political subdivision. Actual costs are the nonfacility costs incurred in the relocation plus the undepreciated amount of the facilities being replaced. Recovery of actual costs incurred for relocation is intended for those state and political subdivision requests that are determined by the commission to be beyond the normal course of business.

(b) The commission shall verify the actual costs that may be recovered, determine the allocation of costs to various customers and services, and prescribe the method of such recovery. In no event shall the period of recovery of the relocation costs exceed three years.

(c) In determining the allocation of the costs to be recovered, the commission shall consider the jurisdiction requiring the relocation and the geographic area that most directly benefits from the required relocation to determine the customers or services that will bear the costs.

Source: L. 2003: Entire section added, p. 2640, § 1, effective August 6.

ARTICLE 3.2

Air Quality Improvement Costs

PART 1		40-3.2-202.	Legislative declaration.
GENERAL PROVISIONS		40-3.2-203.	Definitions.
		40-3.2-204.	Emission control plans - role of the department of public health and environment - timing of emission reductions - approval.
40-3.2-101.	Legislative declaration.		
40-3.2-102.	Recovery of air quality improvement costs.		
40-3.2-103.	Gas distribution utility demand-side management programs - rules - recovery of costs.	40-3.2-205.	Review - approval.
		40-3.2-206.	Coal plant retirements - replacement resources.
40-3.2-104.	Electricity utility demand-side management programs - rules - annual report.	40-3.2-207.	Cost recovery - legislative declaration.
		40-3.2-208.	Air quality planning.
40-3.2-105.	Reporting requirement.	40-3.2-209.	Early reductions.
		40-3.2-210.	Exemption from limits on voluntary emission reductions.

PART 2

COORDINATED UTILITY PLAN TO REDUCE AIR EMISSIONS

40-3.2-201. Short title.

PART 1

GENERAL PROVISIONS

40-3.2-101. Legislative declaration. The general assembly hereby finds, determines, and declares that cost-effective natural gas and electricity demand-side management programs will save money for consumers and utilities and protect Colorado's environment. The general assembly further finds, determines, and declares that providing funding mechanisms to encourage Colorado's public utilities to reduce emissions or air pollutants and to increase energy efficiency are matters of statewide concern and that the public

interest is served by providing such funding mechanisms. Such efforts will result in an improvement in the quality of life and health of Colorado citizens and an increase in the attractiveness of Colorado as a place to live and conduct business.

Source: L. 98: Entire article added, p. 1050, § 3, effective July 1. **L. 2007:** Entire section amended, p. 984, § 2, effective May 22.

40-3.2-102. Recovery of air quality improvement costs. (1) A public utility shall be entitled to fully recover from its retail customers the air quality improvement costs that it prudently incurs as a result of a voluntary agreement entered into pursuant to part 12 of article 7 of title 25, C.R.S., after July 1, 1998, except as provided in subsection (7) of this section.

(2) For the purposes of this article, “air quality improvement costs” means the incremental life-cycle costs including capital, operating, maintenance, fuel, and financing costs incurred or to be incurred by a public utility at electric generating facilities located in Colorado. To account for the timing differences between various costs and revenue recovery, life-cycle costs shall be calculated using net present value analysis.

(3) Upon application by a public utility for cost recovery, the commission shall determine an appropriate method of cost recovery that assures full cost recovery for the public utility. The air quality improvement costs recovered by the public utility shall not cause an average rate impact greater than the equivalent of one and one-half mills per kilowatt hour in any period, nor shall such costs exceed a total of two hundred eleven million dollars calculated using 1998 net present value dollars. The air quality improvement costs for a generating facility shall be recovered over a period of fifteen years or less.

(4) Any revenues a public utility receives from transferring, selling, banking, or otherwise using allowances established under title IV of the federal “Clean Air Act” or under any other trading program of regional or national applicability shall be credited to the public utility’s customers to offset air quality improvement costs if such revenues are a result of a voluntary agreement entered into under part 12 of article 7 of title 25, C.R.S.

(5) To the extent that a voluntary agreement entered into under part 12 of article 7 of title 25, C.R.S., does not increase the public utility’s electric generating capacity, the voluntary agreement shall not be subject to any restrictions that arise from the commission’s integrated resources planning rules.

(6) The commission shall assure that any future industry restructuring does not adversely affect the ability of the public utility to recover its air quality improvement costs. Nothing in this section shall prevent the commission from considering the appropriate value, including market value, of a public utility’s generation assets in any future industry restructuring proceeding.

(7) (a) If a public utility’s wholesale sales are subject to regulation by the federal energy regulatory commission and the public utility sells power on the wholesale market from generating facilities that are subject to a voluntary agreement under part 12 of article 7 of title 25, C.R.S., the public utilities commission shall determine whether to assign a portion of the air quality improvement costs to be recovered from the public utility’s wholesale customers. The public utilities commission may assign a portion of the air quality improvement costs to the public utility’s wholesale customers to the extent that such portion of such cost recovery does not conflict with the public utility’s wholesale contracts entered into prior to April 1, 1998.

(b) If the public utilities commission assigns a portion of the public utility’s air quality improvement costs to be recovered from the public utility’s wholesale customers, the public utility may apply to the federal energy regulatory commission for recovery, effective on the date of filing, of the portion of costs assigned to the public utility’s wholesale customers. The public utilities commission shall permit the public utility to recover the portion of costs assigned to the public utility’s wholesale customers from its retail customers pending the federal energy regulatory commission’s approval of recovery from the public utility’s wholesale customers.

(c) Notwithstanding paragraph (b) of this subsection (7), if the public utility fails to apply to the federal energy regulatory commission within six months after the public

utilities commission's final order assigning a portion of the air quality improvement costs to the public utility's wholesale customers or fails to make a diligent, good faith effort to persuade the federal energy regulatory commission to approve the cost recovery from the public utility's wholesale customers, the public utility shall not be entitled to recover said portion of the costs from its retail customers.

(d) All revenues that a public utility receives from its wholesale customers for air quality improvement costs shall be credited as an offset to the air quality improvement costs charged to the public utility's retail customers.

Source: L. 98: Entire article added, p. 1050, § 3, effective July 1.

40-3.2-103. Gas distribution utility demand-side management programs - rules - recovery of costs. (1) On or before September 30, 2007, the commission shall commence a rule-making proceeding, as described in subsection (2) of this section, to develop expenditure and natural gas savings targets, funding and cost-recovery mechanisms, and a financial bonus structure for demand-side management programs implemented by an investor-owned gas distribution utility, also referred to in this section as a "gas utility".

(2) As part of the rule-making proceeding required by subsection (1) of this section, the commission shall:

(a) Adopt DSM program expenditure targets equal to at least one-half of one percent of a natural gas utility's revenues from its full service customers in the year prior to setting such targets;

(b) Establish DSM program savings targets that are commensurate with program expenditures and expressed in terms of an amount of gas saved per unit of program expenditures;

(c) (I) Adopt procedures for allowing gas utilities to recover their prudently incurred costs of DSM programs without having to file a rate case. Such costs shall include, but are not limited to, facility investments; rebates; interest rate buy-downs; incremental labor costs, employee benefits, carrying costs, and employee-related administrative costs; and other administrative costs. All such costs shall be recovered through a cost adjustment mechanism that is set on an annual basis, or more frequently if deemed appropriate.

(II) Cost adjustment procedures shall give gas utilities the option of obtaining cost recovery either through expensing DSM program expenditures or adding them to base rates, with an amortization period to be determined by the commission. In addition, such procedures shall provide that cost recovery for programs directed at residential customers are to be collected from residential customers only and that cost recovery for programs directed at nonresidential customers are to be collected from nonresidential customers only.

(d) Adopt a bonus structure to reward gas utilities for investments in cost-effective DSM programs. For each year of operation, the bonus shall be capped at twenty-five percent of the expenditures or twenty percent of the net economic benefits of the DSM programs, whichever amount is lower. The amount of the bonus awarded each year shall be determined based on the extent to which the gas utility has achieved the targets established by the commission in accordance with paragraphs (a) and (b) of this subsection (2). The bonus shall not count against a gas utility's authorized rate of return or be considered in rate proceedings.

(e) Consider the fact that implementing the new DSM programs may require a phase-in period before a gas utility is able to achieve the funding level determined by the commission pursuant to paragraph (a) of this subsection (2). A gas utility that implements a new DSM program in phases shall be eligible to receive a bonus under the bonus structure adopted pursuant to paragraph (d) of this subsection (2) during its phase-in period.

(f) Not adopt any measure authorizing a financial penalty against a gas utility that fails to meet the targets in any particular year.

(3) Within twelve months after the completion of the rule-making required by subsection (1) of this section, each gas utility shall:

(a) Develop and begin implementing a set of cost-effective DSM programs for its full service customers. Such programs shall be of the gas utility's choosing, taking into account the characteristics of the gas utility and its customers. One or more programs may be

targeted to low-income customers and, if so, may be provided directly by the gas utility or indirectly through financial support of conservation programs for low-income households administered by the state.

(b) In implementing DSM programs, use reasonable efforts to maximize energy savings consistent with the annual energy efficiency budget.

(4) In implementing DSM programs, gas utilities may spend a disproportionate share of total expenditures on one or more classes of customers.

(5) The commission shall authorize each gas utility to recover moneys spent for education programs, impact and process evaluations, and program planning related to natural gas DSM programs offered by the gas utility without having to show that such expenditures, on an independent basis, are cost-effective. The commission may limit the amount spent for these activities.

(6) (a) Gas utilities shall submit annual reports to the commission, as determined by the commission by rule. The annual report shall describe the gas utility's DSM programs and shall document program expenditures, energy savings impacts and the techniques used to estimate these impacts, the estimated cost-effectiveness of program expenditures, and any other information the commission may require.

(b) The commission shall review each report submitted pursuant to paragraph (a) of this subsection (6) and shall determine the level of bonus, if any, that the gas utility is eligible to collect on the basis of the information included in the report. The commission's determination shall be made within three months after receiving the report. Any such bonus shall be authorized as a supplement to the cost adjustment mechanism or alternative mechanism approved by the commission and shall be applied over a twelve-month period after approval of the bonus.

(7) Gas utilities may continue DSM programs that were in existence on or before May 22, 2007, and shall not be required to obtain approval from the commission for such programs.

(8) This section shall not be construed to extend the commission's authority to any nonregulated utility businesses or affiliates of a gas utility.

Source: L. 2007: Entire section added, p. 984, § 3, effective May 22.

Cross references: For the definition of DSM programs, see § 40-1-102.

40-3.2-104. Electricity utility demand-side management programs - rules - annual report. (1) It is the policy of the state of Colorado that a primary goal of electric utility least-cost resource planning is to minimize the net present value of revenue requirements. The commission may adopt rules as necessary to implement this policy.

(2) The commission shall establish energy savings and peak demand reduction goals to be achieved by an investor-owned electric utility, taking into account the utility's cost-effective DSM potential, the need for electricity resources, the benefits of DSM investments, and other factors as determined by the commission. The energy savings and peak demand reduction goals shall be at least five percent of the utility's retail system peak demand measured in megawatts in the base year and at least five percent of the utility's retail energy sales measured in megawatt-hours in the base year. The base year shall be 2006. The goals shall be met in 2018, counting savings in 2018 from DSM measures installed starting in 2006. The commission may establish interim goals and may revise the goals as it deems appropriate.

(3) The commission shall permit electric utilities to implement cost-effective electricity DSM programs to reduce the need for additional resources that would otherwise be met through a competitive acquisition process.

(4) The commission shall ensure that utilities develop and implement DSM programs that give all classes of customers an opportunity to participate and shall give due consideration to the impact of DSM programs on nonparticipants and on low-income customers.

(5) The commission shall allow an opportunity for a utility's investments in cost-effective DSM programs to be more profitable to the utility than any other utility investment that is not already subject to special incentives. In complying with this subsection (5), the

commission shall consider, without limitation, the following incentive mechanisms, which shall take into consideration the performance of the DSM program:

(a) An incentive to allow a rate of return on DSM investments that is higher than the utility's rate of return on other investments;

(b) An incentive to allow the utility to accelerate the depreciation or amortization period for DSM investments;

(c) An incentive to allow the utility to retain a portion of the net economic benefits associated with a DSM program for its shareholders;

(d) An incentive to allow the utility to collect the costs of DSM programs through a cost adjustment clause;

(e) Other incentive mechanisms that the commission deems appropriate.

(6) Each investor-owned electric utility shall submit an annual report to the commission describing the DSM programs implemented by the electric utility in the previous year. The report shall document the following:

(a) Program expenditures, including incentive payments;

(b) Peak demand and energy savings impacts and the techniques used to estimate those impacts;

(c) Avoided costs and the techniques used to estimate those costs;

(d) The estimated cost-effectiveness of the DSM programs;

(e) The net economic benefits of the DSM programs; and

(f) Any other information required by the commission.

(7) For purposes of this section, "electric utility" or "utility" means "investor-owned utility".

Source: L. 2007: Entire section added, p. 984, § 3, effective May 22; (7) added, p. 1172, § 3, effective May 23.

Cross references: For the definition of DSM programs, see § 40-1-102.

40-3.2-105. Reporting requirement. By April 30, 2009, and by each April 30 thereafter, the commission shall submit a report to the business, labor, and technology committee of the senate, or its successor committee, and the business affairs and labor committee of the house of representatives, or its successor committee, on the progress made by investor-owned utilities in meeting their natural gas and electricity demand-side management goals. The report shall include any recommended statutory changes the commission deems necessary to further the intent of sections 40-3.2-103 and 40-3.2-104.

Source: L. 2007: Entire section added, p. 984, § 3, effective May 22.

PART 2

COORDINATED UTILITY PLAN TO REDUCE AIR EMISSIONS

40-3.2-201. Short title. This part 2 shall be known and may be cited as the "Clean Air - Clean Jobs Act".

Source: L. 2010: Entire part added, (HB 10-1365), ch. 140, p. 466, § 1, effective April 19.

40-3.2-202. Legislative declaration. (1) The general assembly hereby finds, determines, and declares that the federal "Clean Air Act", 42 U.S.C. sec. 7401 et seq., will likely require reductions in emissions from coal-fired power plants operated by rate-regulated utilities in Colorado. A coordinated plan of emission reductions from these coal-fired power plants will enable Colorado rate-regulated utilities to meet the requirements of the federal act and protect public health and the environment at a lower cost than a piecemeal approach.

A coordinated plan of reduction of emissions for Colorado's rate-regulated utilities will also result in reductions in many air pollutants and promote the use of natural gas and other low-emitting resources to meet Colorado's electricity needs, which will in turn promote development of Colorado's economy and industry.

(2) The general assembly further finds that the use of natural gas to reduce coal-fired emissions may require rate-regulated utilities to enter into long-term contracts for natural gas in a manner that protects electricity consumers. Even though such long-term contracts might be beneficial to consumers, financial rating agencies could find that such long-term contracts increase the financial risk to rate-regulated utilities, which in turn could increase the cost of capital to these utilities. The general assembly finds that it is important to give financial markets confidence that utilities will be able to recover the costs of long-term gas contracts without the risk of future regulators disallowing contracts.

(3) The general assembly further finds and declares that Colorado rate-regulated utilities require timely and forward-looking reviews of their costs of providing utility service in order to undertake the comprehensive and extensive planning and changes to their business operations contemplated by this part 2. In order to allow these utilities to continue to provide reliable electric service, alter their operations in the manner described by this part 2, and meet other state public policy goals, it is imperative that Colorado rate-regulated utilities continue in sound financial condition and remain attractive investments so that sufficient capital is provided to achieve the state's goals. To that end, the general assembly finds that the commission should have additional tools and more flexibility in its regulatory authority to ensure the continued financial health of these utilities. The general assembly also finds and declares that the actions provided for in this part 2 be implemented in a manner to address the sound economic, health, and environmental conditions of energy producing communities.

Source: L. 2010: Entire part added, (HB 10-1365), ch. 140, p. 466, § 1, effective April 19.

40-3.2-203. Definitions. As used in this part 2, unless the context otherwise requires:

(1) "Air quality control commission" means the commission created in section 25-7-104, C.R.S.

(2) "Department" means the department of public health and environment.

(3) "Federal act" means the federal "Clean Air Act", 42 U.S.C. sec. 7401 et seq., as amended.

(4) "State act" means the "Colorado Air Pollution Prevention and Control Act", article 7 of title 25, C.R.S.

(5) "State implementation plan" means the plan required by and described in section 110 (a) and other provisions of the federal act.

Source: L. 2010: Entire part added, (HB 10-1365), ch. 140, p. 467, § 1, effective April 19.

40-3.2-204. Emission control plans - role of the department of public health and environment - timing of emission reductions - approval. (1) On or before August 15, 2010, and in coordination with current or expected requirements of the federal act and the state act, all rate-regulated utilities that own or operate coal-fired electric generating units located in Colorado shall submit to the commission an emission reduction plan for emissions from those units.

(2) (a) The plan filed under this section shall cover a minimum of nine hundred megawatts or fifty percent of the utility's coal-fired electric generating units in Colorado, whichever is smaller. Except as set forth in section 40-3.2-206, the coal-fired capacity covered under the plan filed under this section shall not include any coal-fired capacity that the utility has already announced that it plans to retire prior to January 1, 2015. At the utility's discretion, the plan may include some or all of the following elements:

(I) New emission control equipment for oxides of nitrogen and other pollutants;

(II) Retirement of coal-fired units, if the retired coal-fired units are replaced by natural gas-fired electric generation or other low-emitting resources as defined in section 40-3.2-206, including energy efficiency;

(III) Conversion of coal-fired generation to run on natural gas;

(IV) Long-term fuel supply agreements;

(V) New natural gas pipelines and other supporting gas infrastructure;

(VI) Increased utilization of existing gas-fired generating capacity;

(VII) New transmission lines and other supporting transmission infrastructure;

(VIII) Emission control equipment that is required to be installed at affected units prior to or in conjunction with any retirement, conversion, or emission control equipment retrofit set forth under the plan in order to limit any pollutant other than oxides of nitrogen; and

(IX) Any other capital, fuel, and operations and maintenance expenditures appropriate to support the implementation of the plan.

(b) (I) Prior to filing the plan, the utility shall consult with the department and shall work with the department in good faith to design a plan to meet the current and reasonably foreseeable requirements of the federal act and state law in a cost-effective and flexible manner.

(II) The commission shall provide the department an opportunity to:

(A) Comment on the air quality, all other air pollutants, and other emission reductions of the plan; and

(B) Evaluate and determine whether the plan is consistent with the current and reasonably foreseeable requirements of the federal act.

(III) In commenting upon the utility's plan, the department shall determine whether any new or repowered electric generating unit proposed under the plan, other than a peaking facility utilized less than twenty percent on an annual basis or a facility that captures and sequesters more than seventy percent of emissions not subject to a national ambient air quality standard or a hazardous air pollutant standard, will achieve emission rates equivalent to or less than a combined-cycle natural gas generating unit.

(IV) The commission shall not approve a plan except after an evidentiary hearing and unless the department has determined that the plan is consistent with the current and reasonably foreseeable requirements of the federal act.

(c) The plan shall include a schedule that would result in full implementation of the plan on or before December 31, 2017. The schedule may include interim milestones. The utility shall design the schedule to protect system reliability, control overall cost, and assure consistency with the requirements of the federal act.

(d) The plan shall set forth the costs associated with activities identified in the plan, including the planning, development, construction, and operation of elements identified pursuant to subparagraphs (I) to (IX) of paragraph (a) of this subsection (2), as well as the costs of any shutdown, decommissioning, or repowering of existing coal-fired electric generating units that are set forth in the plan.

Source: L. 2010: Entire part added, (HB 10-1365), ch. 140, p. 468, § 1, effective April 19.

40-3.2-205. Review - approval. (1) In evaluating the plan, the commission shall consider the following factors:

(a) Whether the department reports that the plan is likely to achieve at least a seventy to eighty percent reduction, or greater, in annual emissions of oxides of nitrogen as necessary to comply with current and reasonably foreseeable requirements of the federal act and the state act. The reduction in emissions under this paragraph (a) shall be measured from 2008 levels at coal-fired power plants identified in the plan. In determining the reduction in emissions under this paragraph (a), the department shall include:

(I) Emissions from coal-fired power plants identified in the plan and continuing to operate after retrofit with emission control equipment; and

(II) Emissions from any facilities constructed to replace any retired coal-fired power plants identified in the plan.

- (b) Whether the department has made the determination under section 40-3.2-204 (2) (b) (III);
 - (c) The degree to which the plan will result in reductions in other air pollutant emissions;
 - (d) The degree to which the plan will increase utilization of existing natural gas-fired generating capacity;
 - (e) The degree to which the plan enhances the ability of the utility to meet state or federal clean energy requirements, relies on energy efficiency, or relies on other low-emitting resources;
 - (f) Whether the plan promotes Colorado economic development;
 - (g) Whether the plan preserves reliable electric service for Colorado consumers;
 - (h) Whether the plan is likely to help protect Colorado customers from future cost increases, including costs associated with reasonably foreseeable emission reduction requirements; and
 - (i) Whether the cost of the plan results in reasonable rate impacts. In evaluating the rate impacts of the plan, the commission shall examine the impact of the rates on low-income customers.
- (2) The commission shall review the plan and enter an order approving, denying, or modifying the plan by December 15, 2010. Any modifications required by the commission shall result in a plan that the department determines is likely to meet current and reasonably foreseeable federal and state act requirements.
- (3) All actions taken by the utility in furtherance of, and in compliance with, an approved plan are presumed to be prudent actions, the costs of which are recoverable in rates as provided in section 40-3.2-207.
- (4) If the utility disagrees with the commission's modifications to its proposed plan with respect to resource selection, the utility may withdraw its application.

Source: L. 2010: Entire part added, (HB 10-1365), ch. 140, p. 469, § 1, effective April 19.

40-3.2-206. Coal plant retirements - replacement resources. (1) (a) The general assembly finds that, in designing a coordinated emission reduction plan as described in section 40-3.2-204 and to expeditiously accelerate coal plant retirements, it is in the public interest for utilities to give primary consideration to replacing or repowering their coal generation with natural gas generation and that utilities shall also consider other low-emitting resources, including energy efficiency, if this replacement or repowering can be accomplished prudently and for reasonable rate impacts compared with placing additional emission controls on coal-fired generating units, and if electric system reliability can be preserved. To that end, in the plan required under section 40-3.2-204, each utility shall include an evaluation of the following proposals:

(I) The cost and system reliability impacts of retiring a minimum of nine hundred megawatts of coal-fired electric generating capacity, or fifty percent of the utility's coal-fired generating units in Colorado, whichever is less, by January 1, 2015, and repowering the affected coal-fired facilities with natural gas or replacing them with natural gas-fired generation or other low-emitting resources, including energy efficiency. The coal-fired capacity evaluated under this subparagraph (I) shall not include any coal-fired capacity that the utility has already announced that it plans to retire prior to January 1, 2015. The utility may also prepare evaluations of additional scenarios, including scenarios that result in the retirement of less than nine hundred megawatts of coal-fired electric generating capacity or the retirement of some portion of the nine hundred megawatts of capacity after January 1, 2015, but before January 1, 2018.

(II) Retirements of a portion of its coal-fired generating capacity in the period after April 19, 2010, but prior to January 1, 2015. At a minimum, the utility shall evaluate whether to retire a portion of its coal-fired capacity on or before January 1, 2013, or whether the retirements of coal-fired generating facilities that have already been announced could be advanced to an earlier retirement date.

(b) (I) For all evaluations required by this subsection (1), the utility shall report:

(A) The estimated overall impacts on the utility's emissions of oxides of nitrogen and other pollutants;

(B) The feasibility of the retirement, repowering, or replacement on the schedule proposed in the evaluation;

(C) The costs and impact on electric rates from these proposals; and

(D) The impact of the retirements on the reliability of the utility's electric service.

(II) All evaluations required by this subsection (1) shall contrast the costs of replacing coal generation with natural gas generation and other low-emitting resources, including energy efficiency, with the costs of installing additional emission controls on the coal plants.

(2) The utility shall set forth in its plan the utility's proposal for the best way of timely meeting the emission reduction requirements required by federal and state law, given the need to preserve electric system reliability, to avoid unreasonable rate increases, and the economic and environmental benefits of coordinated emission reductions.

(3) In reviewing the reasonableness of the utility's proposed plan, the commission shall:

(a) Compare the relative costs of repowering or replacing coal facilities with natural gas generation or other low-emitting resources, including energy efficiency, to an alternative that incorporates emission controls on the existing coal-fired units;

(b) Use reasonable projections of future coal and natural gas costs;

(c) Incorporate a reasonable estimate for the cost of reasonably foreseeable emission regulation consistent with the commission's existing practice;

(d) Consider the degree to which the plan will increase utilization of existing natural gas-fired generating resources available to the utility, together with increased utilization of other low-emitting resources including energy efficiency; and

(e) Consider the economic and environmental benefits of a coordinated emissions reduction strategy.

(4) The utility may enter into long-term gas supply agreements to implement the requirements of this part 2. A long-term gas supply agreement is an agreement with a term of not less than three years or more than twenty years. All long-term gas supply agreements may be filed with the commission for review and approval. The commission shall determine whether the utility acted prudently by entering into the specific agreement, whether the proposed agreement appears to be beneficial to consumers, and whether the agreement is in the public interest. If an agreement is approved, the utility is entitled to recover through rates the costs it incurs under the approved agreement, and any approved amendments to the agreement, notwithstanding any change in the market price of natural gas during the term of the agreement. The commission shall not reverse its approval of the long-term gas agreement even if the agreement price is higher than a future market price of natural gas.

Source: L. 2010: Entire part added, (HB 10-1365), ch. 140, p. 470, § 1, effective April 19.

40-3.2-207. Cost recovery - legislative declaration. (1) (a) A utility is entitled to fully recover the costs that it prudently incurs in executing an approved emission reduction plan, including the costs of planning, developing, constructing, operating, and maintaining any emission control or replacement capacity constructed pursuant to the plan, as well as any interim air quality emission control costs the utility incurs while the plan is being implemented.

(b) The general assembly finds that the emissions reductions under this part 2 are being made to assist the state of Colorado to comply with current and reasonably foreseeable emission restrictions under federal law. To provide this assistance, the utility is being asked to make substantial capital investments and to enter into substantial contractual commitments in an expedited time period outside of the normal resource planning process.

(2) (a) If a public utility's wholesale sales are subject to regulation by the federal energy regulatory commission, and if the public utility sells power on the wholesale market from a project developed pursuant to the plan, the commission shall determine whether to assign a portion of the plan cost to be recovered from the public utility's wholesale

customers. The commission may make such assignment to the extent that it does not conflict with the public utility's wholesale contracts entered into before April 19, 2010.

(b) Except as specified in paragraph (c) of this subsection (2), if the commission makes an assignment of costs pursuant to paragraph (a) of this subsection (2) and if the utility applies to the federal energy regulatory commission for recovery and pursues that application in good faith, then:

(I) To the extent that the federal energy regulatory commission does not permit recovery of the allocated wholesale portion of plan-related investment, the commission shall approve retail rates sufficient to recover such disallowed wholesale portion of the investment through the recovery mechanism detailed in this section; and

(II) The public utility may not recover any revenue shortfall caused by a delay in making any filing with the federal energy regulatory commission or due to any rate suspension period employed by the federal energy regulatory commission or because the public utility failed to pursue recovery of the amounts at the federal energy regulatory commission in good faith.

(c) If the public utility fails to apply to the federal energy regulatory commission within six months after the commission's final order assigning a portion of the plan's costs to the public utility's wholesale customers, the public utility is not entitled to recover the assigned portion of the costs from its retail customers.

(3) Current recovery shall be allowed on construction work in progress at the utility's weighted average cost of capital, including its most recently authorized rate of return on equity, for expenditures on projects associated with the plan during the construction, startup, and preservice implementation phases of the projects.

(4) To the extent that an approved plan includes the early conversion or closure of coal-based generation capacity by January 1, 2015, and to the extent that the utility demonstrates that a lag in the recovery of the costs of the plan related to the investment required by such plan contributes to a utility earning less than its authorized return on equity, the commission shall employ rate-making mechanisms, in addition to allowing a current return on construction work in progress, that permit rate adjustments, no less frequently than once per year, without requiring the utility to file a general rate case to allow recovery of the approved plan's costs. Such rate-making mechanisms may include a separate rate adjustment clause, regular make-whole rate increases, or other appropriate mechanisms as determined by the commission.

(5) During the time any special regulatory practice is in effect, the utility shall file a new rate case at least every two years or file a base rate recovery plan that spans more than one year.

(6) The commission shall allow, but not require, the utility to develop and own as utility rate-based property any new electric generating plant constructed primarily to replace any coal-fired electric generating unit retired pursuant to the plan filed under this part 2.

Source: L. 2010: Entire part added, (HB 10-1365), ch. 140, p. 472, § 1, effective April 19.

40-3.2-208. Air quality planning. (1) The air quality provisions of the emission reduction plan filed under this part 2 are intended to fulfill the requirements of the state and federal acts and shall be proposed by the department to the air quality control commission after the utility files the plan with the commission to be considered for incorporation into the regional haze element of the state implementation plan.

(2) (a) Upon the utility's filing of the utility plan with the commission pursuant to section 40-3.2-204, the air quality control commission, in response to the proposal by the department, shall initiate a proceeding to incorporate the air quality provisions of the utility plan into the regional haze element of the state implementation plan. Except as set forth in this subsection (2), the air quality control commission shall not act on the utility plan or the provisions of the regional haze element of the state implementation plan that would establish controls for those units covered by the utility plan until after the commission's approval of the utility plan.

(b) The air quality control commission shall vacate the entire proceeding related to the utility plan and shall initiate a new proceeding for the consideration of alternative proposals for the appropriate controls for those units covered by the utility plan for inclusion in the regional haze element of the state implementation plan if:

- (I) The commission does not approve the utility plan by December 15, 2010;
- (II) The utility withdraws its application pursuant to section 40-3.2-205 (4); or
- (III) The air quality control commission rejects any portion of the utility plan as approved by the commission.

(c) The air quality control commission shall conduct the proceedings specified in this subsection (2) after public notice and an opportunity for the public to participate in accordance with the air quality control commission’s procedures.

(3) If the final approved provisions of the state implementation plan are not consistent with the air quality provisions of the utility plan, the utility may file a revised utility plan with the commission that modifies the original plan to be consistent with the final approved state implementation plan. The revised utility plan is subject to all of the review and cost recovery provisions contained in this part 2. Notwithstanding any revision required to the utility plan, the utility is entitled to fully recover any costs it prudently incurred or contracted to incur under the originally approved plan prior to the plan’s revision and any costs incurred as a result of any enforceable state implementation plan or other air quality requirements.

Source: L. 2010: Entire part added, (HB 10-1365), ch. 140, p. 474, § 1, effective April 19.

40-3.2-209. Early reductions. Reductions in emissions achieved pursuant to this part 2 through a compliance strategy before such reductions are mandated under federal law are voluntary for purposes of determining early reduction credits under federal law.

Source: L. 2010: Entire part added, (HB 10-1365), ch. 140, p. 475, § 1, effective April 19.

40-3.2-210. Exemption from limits on voluntary emission reductions. The limits on utility expenditures on voluntary emission reductions in section 40-3.2-102 do not apply to utility expenditures under a plan approved by the commission under this part 2.

Source: L. 2010: Entire part added, (HB 10-1365), ch. 140, p. 475, § 1, effective April 19.

ARTICLE 3.4

Emergency Telephone Access

Editor’s note: This article was repealed in 1989 and was subsequently recreated and reenacted in 1990, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1989, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

40-3.4-101.	Short title.	40-3.4-107.	Annual reports.
40-3.4-102.	Legislative declaration.	40-3.4-108.	Funding - federal require-
40-3.4-103.	Definitions.		ments - program participa-
40-3.4-104.	Low-income telephone assis-		tion - low-income telephone
	tance authorization require-		assistance fund.
	ments.	40-3.4-109.	Program restrictions.
40-3.4-105.	Low-income telephone assis-	40-3.4-110.	Applicability.
	tance - eligibility.	40-3.4-111.	Termination of assistance.
40-3.4-106.	Rules and regulations.		

40-3.4-101. Short title. This article shall be known and may be cited as the “Emergency Telephone Access Act”.

Source: L. 90: Entire article RC&RE, p. 1754, § 1, effective July 1.

40-3.4-102. Legislative declaration. The general assembly hereby finds, determines, and declares that the absence of basic local exchange telecommunications services, especially during time of emergency, presents a potential hazard and an unnecessary danger to human health and safety. Therefore, the general assembly declares it to be of vital importance to the public health, safety, and welfare that low-income individuals receive assistance that is adequate to insure access to basic local exchange telecommunications services.

Source: L. 90: Entire article RC&RE, p. 1754, § 1, effective July 1.

40-3.4-103. Definitions. As used in this article, unless the context otherwise requires:

(1) “Basic local exchange telecommunications services” means any of the telecommunications services which provide a dial tone and local usage necessary to place or receive a call within an exchange area or local free calling area.

(2) “Eligible subscriber” means an individual who is qualified to receive low-income telephone assistance pursuant to section 40-3.4-105.

Source: L. 90: Entire article RC&RE, p. 1754, § 1, effective July 1.

40-3.4-104. Low-income telephone assistance authorization requirements. The general assembly hereby authorizes and directs the implementation of low-income telephone assistance programs. Such programs shall be provided to certain low-income subscribers by providers of basic local exchange telecommunications services. Such programs shall consist of a twenty-five percent discount for a single local dial tone line and the flat rate usage charge in the principal residence of an eligible subscriber. Eligible subscribers who pay mileage charges associated with basic telephone service may be eligible for a twenty-five percent discount for these charges. In no event shall the discount provided be less than the end user common line charges imposed by the federal communications commission. All program plans shall be submitted to the federal communications commission for approval.

Source: L. 90: Entire article RC&RE, p. 1755, § 1, effective July 1.

40-3.4-105. Low-income telephone assistance - eligibility. (1) An individual is eligible for low-income telephone assistance if the person:

(a) Is certified by the department of human services to receive financial assistance payments under at least one of the following programs:

(I) An old age pension as set forth in section 26-2-111 (2), C.R.S.;

(II) Aid to the needy disabled as set forth in section 26-2-111 (4), C.R.S.;

(III) Aid to the blind as set forth in section 26-2-111 (5), C.R.S.;

(IV) Supplemental security income benefits under the federal “Social Security Act”, as amended, 42 U.S.C. sec. 1381;

(V) Colorado works assistance as set forth in section 26-2-706, C.R.S.; or

(VI) Low-income home energy assistance benefits under the federal “Energy Policy Act of 2005”, as amended, 42 U.S.C. sec. 8621 et seq.;

(b) Is a current or prospective subscriber to basic local exchange service, as defined in section 40-15-102; and

(c) Is a citizen or legal resident of the United States and a resident of Colorado.

(d) (Deleted by amendment, L. 2011, (SB 11-002), ch. 38, p. 103, § 1, effective August 10, 2011.)

(2) The department of human services shall periodically recertify an individual's eligibility to receive low-income telephone assistance.

(3) (Deleted by amendment, L. 2011, (SB 11-002), ch. 38, p. 103, § 1, effective August 10, 2011.)

Source: L. 90: Entire article RC&RE, p. 1755, § 1, effective July 1. L. 94: Entire section amended, p. 2718, § 302, effective July 1. L. 2008: Entire section amended, p. 1793, § 10, effective July 1. L. 2010: (1)(d) amended, (HB 10-1422), ch. 419, p. 2124, § 182, effective August 11. L. 2011: (1) and (3) amended, (SB 11-002), ch. 38, p. 103, § 1, effective August 10.

Cross references: For the legislative declaration contained in the 1994 act amending this section, see section 1 of chapter 345, Session Laws of Colorado 1994.

40-3.4-106. Rules and regulations. The commission shall promulgate such rules and regulations as are necessary for the implementation of this article.

Source: L. 90: Entire article RC&RE, p. 1755, § 1, effective July 1.

40-3.4-107. Annual reports. (1) The commission shall monitor the effectiveness of low-income assistance programs and, if necessary, provide the federal communications commission with annual reports. Such reports may include:

- (a) A description of the assistance measures used in the programs;
- (b) The costs of the programs;
- (c) The number of households receiving low-income telephone assistance;
- (d) The number of existing eligible subscribers who switch to low-income telephone assistance from another telephone service;
- (e) The number of new subscribers using low-income telephone assistance;
- (f) All other available information concerning the effect of the program on eligible subscribership levels.

Source: L. 90: Entire article RC&RE, p. 1755, § 1, effective July 1.

40-3.4-108. Funding - federal requirements - program participation - low-income telephone assistance fund. (1) The commission shall determine and impose a uniform charge on each business and residential access line in an amount sufficient to reimburse each provider of basic local exchange telecommunications services for its provision of low-income telephone assistance and to reimburse the department of human services for administrative expenses incurred under this article. The charge shall not be imposed on any state or local governmental body or on eligible subscribers. Each fiscal year, the commission, after considering any surplus revenues carried forward from the previous year, shall adjust the amount of the charge as necessary to provide the assistance authorized in this article. Each provider of basic local exchange telecommunications services providing low-income telephone assistance shall collect the entire charge imposed on business and residential access lines as determined by the commission. The charge established by the commission pursuant to this subsection (1) shall not generate any additional profit for the providers of basic local exchange telecommunications services.

(2) (a) Upon collecting the charge imposed pursuant to subsection (1) of this section, each provider may retain, from the total charges collected, an amount sufficient to reimburse such provider for its provision of low-income telephone assistance and shall transmit the remaining portion of the total charges collected to the state treasurer, who shall credit the same to the low-income telephone assistance fund, which fund is hereby created. The moneys in the fund shall be subject to annual appropriation by the general assembly for the direct and indirect costs incurred by the department of human services under this article.

(b) The low-income telephone assistance fund may maintain an amount of uncommitted reserves, as defined in section 24-75-402 (2) (h), C.R.S., that shall not exceed two hundred fifty thousand dollars.

(3) The commission, providers of basic local exchange telecommunications services, and the department of human services shall comply with all requirements expressly provided by federal order, regulation, and statute for eligible subscribers to qualify for federal assistance under low-income telephone assistance programs.

(4) Subject to available reimbursement from any source other than the state, the department of human services may participate in other federal telecommunications assistance programs for low-income individuals. No state moneys shall be appropriated to provide for participation in such programs.

(5) The department of human services is authorized to accept, on behalf of the state of Colorado, and expend any reimbursement from providers of basic local exchange telecommunication services, pursuant to this article, for administrative costs incurred by the department in implementing this article. The department of human services is also authorized to accept grants from private or other sources to assist in reducing rates for eligible subscribers to the low-income telephone assistance program.

Source: **L. 90:** Entire article RC&RE, p. 1755, § 1, effective July 1. **L. 93:** (2) amended, p. 1793, § 89, effective June 6; (1) and (2) amended, p. 2062, § 14, effective July 1. **L. 94:** Entire section amended, p. 2718, § 303, effective July 1. **L. 98:** (2) amended, p. 1349, § 87, effective June 1.

Editor's note: Amendments to subsection (2) by Senate Bill 93-18 and House Bill 93-1342 were harmonized.

Cross references: For the legislative declaration contained in the 1994 act amending this section, see section 1 of chapter 345, Session Laws of Colorado 1994.

40-3.4-109. Program restrictions. Low-income telephone assistance shall only be provided for a single line at the principal residence of eligible subscribers.

Source: **L. 90:** Entire article RC&RE, p. 1756, § 1, effective July 1.

40-3.4-110. Applicability. This article shall apply to all providers of basic local exchange telecommunications services with more than five hundred thousand subscribers and certified to do business in the state; except that any such certified company with fewer subscribers may petition the commission for discounted rates for their subscribers eligible to receive low-income telephone assistance.

Source: **L. 90:** Entire article RC&RE, p. 1757, § 1, effective July 1.

40-3.4-111. Termination of assistance. The requirements of this article for the provision of low-income telephone assistance shall not apply at any time after federal assistance for such programs has terminated.

Source: **L. 90:** Entire article RC&RE, p. 1757, § 1, effective July 1.

ARTICLE 3.5

Regulation of Rates and Charges by Municipal Utilities

40-3.5-101. Application - reasonable
charges - adequate service.

40-3.5-102.
40-3.5-103.

Regulation of rates.
Rate schedules.

40-3.5-104. Changes in rates - notice and public hearing.

40-3.5-106. Advantages prohibited - graduated schedules.

40-3.5-105. Free and reduced service prohibited - exceptions.

40-3.5-107. Fees.

40-3.5-101. Application - reasonable charges - adequate service. (1) This article shall be applicable within the authorized electric and natural gas service areas of each municipal utility that lie outside the jurisdictional limits of such municipality. Insofar as municipal utilities establish rates, charges, and tariffs and any regulations pertaining thereto in accordance with the provisions of this article, the provisions of section 40-1-104 and articles 4, 6, and 7 of this title shall not apply; except that section 40-4-105 shall apply with respect to the crossing of railroad rights-of-way. Nothing in this article shall be construed as limiting the applicability of article 5 of this title.

(2) All charges made, demanded, or received by any municipal utility for any rate, product, or commodity furnished or to be furnished or any service rendered or to be rendered shall be just, reasonable, and sufficient.

(3) Every municipal utility shall furnish, provide, and maintain such service, instrumentalities, equipment, and facilities as shall promote the safety, health, comfort, and convenience of its patrons, its employees, and the public, and as shall in all respects be adequate, efficient, just, and reasonable.

(4) For the purposes of this article, "municipal utility" means a municipal natural gas or electric utility.

Source: L. 83: Entire article added, p. 1553, § 2, effective June 17. L. 2002: (1) amended, p. 1947, § 3, effective June 8.

Cross references: For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 350, Session Laws of Colorado 2002.

40-3.5-102. Regulation of rates. The power and authority is hereby vested in the governing body of each municipal utility and it is hereby made the duty of each such governing body to adopt all necessary rates, charges, and regulations to govern and regulate all rates, charges, and tariffs of its municipal utility within its authorized electric and natural gas service areas which lie outside the jurisdictional limits of the municipality. No rate, charge, tariff, or voluntary plan approved pursuant to section 40-2-122 shall unjustly discriminate between or among those customers or recipients of any commodity, service, or product of the municipal utility within the authorized service area. In the event that any rate, charge, tariff, or voluntary plan established within the authorized service area which lies outside the jurisdictional limits of the municipality varies from the rate, charge, tariff, or voluntary plan established for the same class of customers or recipients of any such service within the authorized service area which lies inside the jurisdictional limits of the municipality, such rate, charge, tariff, or voluntary plan shall not become effective until reviewed and approved by the commission. Such review and approval shall be in accordance with the provisions of article 3 of this title; except that in no event shall the commission modify or establish such rate, charge, or tariff to an amount lower than that established by the municipality, or approve a voluntary plan that differs from the voluntary plan, for the same class of customers or recipients of any utility service within the authorized service area which lies inside the jurisdictional limits of the municipality.

Source: L. 83: Entire article added, p. 1553, § 2, effective June 17. L. 99: Entire section amended, p. 964, § 2, effective August 4.

40-3.5-103. Rate schedules. Municipal utilities shall print and keep open for public inspection schedules showing all rates and charges collected or enforced, or to be collected or enforced, together with all rules, regulations, contracts, privileges, and facilities which in

any manner affect or relate to rates and service within the authorized electric and natural gas service areas of the municipal utility which lie outside the jurisdictional limits of the municipality.

Source: L. 83: Entire article added, p. 1553, § 2, effective June 17.

40-3.5-104. Changes in rates - notice and public hearing. (1) (a) No change shall be made by any municipal utility in any rate or charge or in any rule, regulation, or contract relating to or affecting any base rate, charge, or service, or in any privilege or facility, except after thirty days' notice to the public. Such notice shall be given by keeping open for public inspection new schedules stating plainly the changes to be made in the schedules then in force and the time when the changes will go into effect. In addition, such notice shall be given by publishing the proposed new schedule, or if that is impractical due to the size or bulk of the proposed new schedule, by publishing a notice of the availability of the proposed new schedule for public inspection, at least once in at least one newspaper of general circulation in the authorized service area at least thirty days and no more than sixty days prior to the date set for public hearing on and adoption of the new schedule.

(b) In addition to the notice provided for in paragraph (a) of this subsection (1), if a municipal utility serves customers who live outside the municipal corporate boundaries, notice of any change in any rate or charge or in any rule, regulation, or contract relating to or affecting any base rate, charge, or service or any change in any privilege or facility shall be given by mailing to such customer notification of any such change.

(2) The notice required by subsection (1) of this section shall also specify the date, time, and place at which the public hearing shall be held by the governing body of the municipal utility to consider the proposed new schedule. The notice shall specify that each municipal utility customer shall have the right to appear, personally or through counsel, at such hearing for the purpose of providing testimony regarding the proposed new schedule. Said public hearing shall be held on the date and time and at the place set forth in the notice; except that the governing body of the municipal utility may adjourn and reconvene said hearing as it deems necessary.

(3) The governing body of the municipal utility, for good cause shown, may allow changes without requiring the thirty days' notice and public hearing by an order specifying the changes to be made, the circumstances necessitating the change without requiring the thirty days' notice and public hearing, the time when the changes shall take effect, and the manner in which the changes shall be published.

(4) Insofar as municipal utilities establish rates, charges, and tariffs and any regulations pertaining thereto in accordance with the provisions of this article, any conflict shall be resolved by the commission in accordance with the procedures contained in article 6 of this title upon the filing of a complaint by no less than five percent of the affected electric or natural gas customers outside the corporate limits of the municipality or by five such customers, whichever number is greater. Any such complaint shall be filed with the commission within thirty days after the final decision by the governing body of the municipality to change a rate, charge, or tariff or any regulation pertaining thereto. If such complaint is heard by the commission and is deemed not frivolous, all reasonable costs as determined by the commission, including reasonable attorney fees, shall be paid by the utility. In any hearing conducted pursuant to the provisions of this section, the burden of proof shall be sustained by the municipal utility.

Source: L. 83: Entire article added, p. 1554, § 2, effective June 17.

40-3.5-105. Free and reduced service prohibited - exceptions. Except as otherwise provided in this section, no municipal utility shall charge, demand, collect, or receive a greater or lesser or different compensation for any product or commodity furnished or to be furnished, or for any service rendered or to be rendered, than the rates and charges applicable to such product, commodity, or service as specified in its schedules on file and in effect at the time, nor shall any such municipal utility refund or remit, directly or

indirectly or in any manner or by any device, any portion of the rates and charges so specified nor extend to any corporation or person any form of contract or agreement or rule or regulation or any facility or privilege except one which is regularly and uniformly extended to all corporations and persons. The governing body of the municipal utility may by rule or order establish such exceptions from the operation of this prohibition as it may consider just and reasonable.

Source: L. 83: Entire article added, p. 1555, § 2, effective June 17.

40-3.5-106. Advantages prohibited - graduated schedules. (1) No municipal utility, as to rates, charges, service, facilities, or in any other respect, shall make or grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage. No municipal utility shall establish or maintain any unreasonable difference as to rates, charges, service, facilities, or in any other respect, either between localities or between any class of service. The governing body of each municipal utility shall determine the reasonableness of any such difference.

(2) Nothing in this article shall prohibit a municipal utility engaged in the production, generation, transmission, distribution, or furnishing of heat, light, gas, or power from establishing a graduated scale of charges subject to the provisions of this article.

(3) Nothing contained in this article shall exempt from the public utilities commission of the state of Colorado the power and authority to regulate the rates, charges, tariffs and any regulations pertaining thereto of the sale of natural gas by a municipal utility to another public utility.

Source: L. 83: Entire article added, p. 1555, § 2, effective June 17.

40-3.5-107. Fees. Municipal utilities authorized to serve areas which lie outside their municipal corporate limits shall be subject to providing annual reports of gross operating revenues, computation of fees, and payment of such fees relating to those areas.

Source: L. 83: Entire article added, p. 1555, § 2, effective June 17.

ARTICLE 4

Service and Equipment

40-4-101.	Regulations, service, and facilities prescribed.	40-4-111.	Uniform system of accounts prescribed.
40-4-102.	Extensions and improvements prescribed - when.	40-4-112.	Depreciation account - rules.
40-4-103.	Increased transportation facilities prescribed.	40-4-113.	Evaluation of retail electric industry structure - study - repeal. (Repealed)
40-4-104.	Connection of noncompetitive lines - costs and rates apportioned.	40-4-114.	Funding and appropriations - retail electricity policy development fund - creation - repeal. (Repealed)
40-4-105.	Joint use of equipment and facilities.	40-4-115.	Reliable electricity infrastructure - task force - repeal. (Repealed)
40-4-106.	Rules for public safety - crossings - allocation of expenses.	40-4-116.	Renewable resource generation development areas - task force - fund - definitions - repeal. (Repealed)
40-4-107.	Time limit regulations. (Repealed)	40-4-117.	Integrated transmission facility planning - review by commission - report - repeal. (Repealed)
40-4-108.	Standards for electricity, gas, and water.		
40-4-109.	Entry to premises - testing meters.		
40-4-110.	Valuations of property.		

40-4-118.	Colorado smart grid task force - fund - definition - reports - repeal.	40-4-119.	Siting of electric transmission facilities - task force - repeal. (Repealed)
-----------	--	-----------	--

40-4-101. Regulations, service, and facilities prescribed. (1) Whenever the commission, after a hearing upon its own motion or upon complaint, finds that the rules, regulations, practices, equipment, facilities, or service of any public utility or the methods of manufacture, distribution, transmission, storage, or supply employed by it are unjust, unreasonable, unsafe, improper, inadequate, or insufficient, the commission shall determine the just, reasonable, safe, proper, adequate, or sufficient rules, regulations, practices, equipment, facilities, service, or methods to be observed, furnished, constructed, enforced, or employed and shall fix the same by its order, rule, or regulation.

(2) The commission shall prescribe rules and regulations for the performance of any service or the furnishing of any commodity of the character furnished or supplied by any public utility, and upon proper tender of rates, such public utility shall furnish such commodity or render such service within the time and upon the conditions provided in such rules.

(3) The commission shall prescribe rules and regulations for the termination of gas and electric service to residential customers. Said rules and regulations shall require that the customer be given reasonable notice and an opportunity to be heard by the terminating utility company before termination of gas or electric service and that such service may not be terminated during certain periods if the customer establishes that termination of the service would be especially dangerous to the health or safety of the customer and that he is unable to pay for the service as regularly billed by the utility, or that he is able to pay but only in reasonable installments.

Source: L. 13: p. 475, § 24. C.L. § 2935. CSA: C. 137, § 25. CRS 53: § 115-4-1. C.R.S. 1963: § 115-4-1. L. 69: p. 933, § 19. L. 80: Entire section amended, p. 748, § 1, effective April 13.

ANNOTATION

Law reviews. For article, "Generation and Transmission Loan Policy Under the Rural Electrification Act", see 43 Den. L.J. 269 (1966).

Railroad under obligation to operate in manner contemplated by charter. The consideration for the franchise, rights, and privileges granted a railroad company by a state is the resulting benefits to the public, and the acceptance by the company, generally speaking, imposes upon it the obligation to operate, when constructed, the railroad it was incorporated to construct, and of doing so in the manner and for the purpose contemplated by its charter. Colo. & S. Ry. v. State R. R. Comm'n, 54 Colo. 64, 129 P. 506 (1912).

Question of loss must be considered in connection with duties of railway company to public, and the result of its corporate business, as a whole; it is not to be excused from performing its whole duty, merely because by ceasing to operate a part of its system the net returns will be increased. Colo. & S. Ry. v. State R. R. Comm'n, 54 Colo. 64, 129 P. 506 (1912).

State may impose upon railroad cost of installation of safety devices at grade crossings, or such part thereof, as it deems appropriate. Atchison, T. & S. F. Ry. v. Pub. Utils. Comm'n, 190 Colo. 378, 547 P.2d 234 (1976).

Not considering cost of maintenance not unfair or unreasonable. The statutory elimination, in § 40-4-106 (2)(b), of consideration of the cost of maintenance in determining allocation of cost of installation does not render the police power exercised unfair or unreasonable. Atchison, T. & S. F. Ry. v. Pub. Utils. Comm'n, 190 Colo. 378, 547 P.2d 234 (1976).

Railway company may be compelled to resume operation of part of line which has been abandoned. Colo. & S. Ry. v. State R. R. Comm'n, 54 Colo. 64, 129 P. 506 (1912).

Commission has exclusive jurisdiction to determine whether railroad company may abandon service upon and dismantle a railroad, lying wholly within the state. People ex rel. Hubbard v. Colo. Title & Trust Co., 65 Colo. 472, 178 P. 6 (1918).

Courts will not interfere with commission's rulings if reasonable. The commission is clothed with general powers to regulate and control carriers for hire within the state, and courts will not interfere with its administrative rulings when they are just and reasonable. Pub. Utils. Comm'n v. Weicker Transp. Co., 102 Colo. 211, 78 P.2d 633 (1938); Airport Limousine Serv., Inc. v. Cabs, Inc., 167 Colo. 378, 447 P.2d 978 (1968).

Applied in Pub. Utils. Comm'n v. Erie, 92 Colo. 151, 18 P.2d 906 (1933); Denver Welfare

Rights Org. v. Pub. Utils. Comm'n, 190 Colo. 329, 547 P.2d 239 (1976).

40-4-102. Extensions and improvements prescribed - when. (1) Whenever the commission, after a hearing upon its own motion, upon appeal by a public utility or power authority from a local government action pursuant to section 29-20-108 (5), C.R.S., or upon complaint, finds that the additions, extensions, repairs, or improvements to or change in the existing plant, equipment, facilities, or other physical property of any public utility or of any two or more public utilities ought reasonably to be made, that a new structure should be erected to promote the security or convenience of its employees or the public or in any other way to secure adequate service or facilities, or that the conditions imposed by a local government action unreasonably impair the ability of a public utility or power authority to provide safe, reliable, and economical service, the commission shall make and serve an order directing that such additions, extensions, repairs, improvements, or changes be made or such structure be erected in the manner and within the time specified in such order. If the commission orders the erection of a new structure, the selection of the site for such structure shall be subject to the approval of the commission. If a public utility or power authority appeals an order from a local government action under section 29-20-108, C.R.S., the commission may require that the public utility or power authority reimburse the commission for the reasonable expenses, attorney fees, and expert witness fees the commission incurs in reviewing the appeal. Any fee collected pursuant to this section shall be remitted to the state treasurer, who shall credit such fee to the public utilities commission fixed utility fund created pursuant to section 40-2-114.

(2) If any additions, extensions, repairs, improvements, or changes or any new structures which the commission has ordered to be erected require joint action of two or more public utilities, the commission shall notify the public utilities that such additions, repairs, improvements, or changes or new structures have been ordered and that the same shall be made at their joint cost, whereupon the public utilities shall have such reasonable time as the commission may grant within which to agree upon the portion or division of cost of such additions, repairs, extensions, improvements, or changes or new structures which each shall bear. If, at the expiration of such time, such public utilities fail to file with the commission a statement that an agreement has been made for a division or apportionment of the cost or expense of such additions, extensions, repairs, improvements, or changes or new structures, the commission has the authority, after further hearing, to make an order fixing the proportion of such expense to be borne by each public utility and the manner in which the same shall be paid or secured.

Source: L. 13: p. 476, § 25. C.L. § 2936. CSA: C. 137, § 26. CRS 53: § 115-4-2. C.R.S. 1963: § 115-4-2. L. 69: p. 933, § 20. L. 2001: (1) amended, p. 597, § 4, effective May 30.

Cross references: For the legislative declaration contained in the 2001 act amending subsection (1), see section 1 of chapter 183, Session Laws of Colorado 2001.

ANNOTATION

General assembly has granted extensive and broad regulatory powers to commission including the power to designate location of facilities and also relocation or removal thereof. Pub. Serv. Co. v. Pub. Utils. Comm'n, 142 Colo. 135, 350 P.2d 543, cert. denied, 364 U.S. 820, 81 S. Ct. 53, 5 L. Ed.2d 50 (1960).

This section vests jurisdiction in commission over adequacy, installation, and exten-

sion of power services and facilities necessary to supply, extend, and connect the same. It follows, therefore, that the jurisdiction of the district court extends only to a review of the decision of the public utilities commission in appropriate proceedings. Intermountain Rural Elec. Ass'n v. District Court, 160 Colo. 128, 414 P.2d 911 (1966).

40-4-103. Increased transportation facilities prescribed. Whenever the commission, after a hearing upon its own motion or upon complaint, finds that any common carrier does not run a sufficient number of trains or vehicles or does not possess or operate sufficient motive power to reasonably accommodate the traffic, whether passenger or freight, or both, transported by or offered to it for transportation, or does not run its trains or vehicles with sufficient frequency or at a reasonable or proper time having regard to safety, or does not stop the same at proper places or does not run any train or vehicle upon a reasonable time schedule for the run, the commission has the power to make an order directing any such common carrier to increase the number of its trains or of its vehicles or its motive power or to change the time of starting its train or vehicle or to change the time schedule for the run of any train or vehicle, or to change the stopping places thereof, or to make any other change the commission may determine to be reasonably necessary to accommodate and transport the traffic, whether passenger or freight, or both, transported or offered to it for transportation.

Source: L. 13: p. 477, § 26. C.L. § 2937. CSA: C. 137, § 27. CRS 53: § 115-4-3. C.R.S. 1963: § 115-4-3. L. 69: p. 933, § 21.

40-4-104. Connection of noncompetitive lines - costs and rates apportioned. Whenever the commission, after a hearing upon its own motion or upon complaint, finds that a physical connection can reasonably be made between the lines of two or more noncompetitive telephone public utilities whose lines can be made to form a continuous line of communication by the construction and maintenance of suitable connections for the transmission of messages or conversations and that the public convenience and necessity will be served or finds that two or more telephone public utilities have failed to establish joint rates, tolls, or charges for service by or over said lines and that joint rates, tolls, or charges ought to be established, the commission may by its order require that such connections be made and that conversations be transmitted and messages transferred over such connection under such rules as the commission may establish and prescribe through lines and joint rates, tolls, and charges to be made and used, observed, and in force in the future. If such telephone public utilities do not agree upon the division between them of the joint cost of the physical connection or connections or the division of the joint rates, tolls, or charges established by the commission over such through lines, the commission has authority, after further hearing, to establish the division by supplemental order.

Source: L. 13: p. 477, § 27. C.L. § 2938. CSA: C. 137, § 28. CRS 53: § 115-4-4. C.R.S. 1963: § 115-4-4. L. 69: p. 934, § 22. L. 2008: Entire section amended, p. 1794, § 11, effective July 1.

Cross references: For duty of telephone company to transmit messages of another company, see § 40-3-107.

40-4-105. Joint use of equipment and facilities. (1) Whenever the commission, after a hearing upon its own motion or upon complaint of a public utility affected, finds that the public convenience and necessity require the use by one public utility of the conduits, subways, tracks, wires, poles, pipes, or other equipment, or any part thereof on, over, or under any street or highway that belongs to another public utility, or the crossing of a railroad right-of-way by a public utility for installation of its own facilities in a manner and in a location that is compatible with the use for railroad purposes, and that such use will not result in irreparable injury to the owners or other users of such conduits, subways, wires, tracks, poles, pipes, or other equipment or to the railroad's use of the right-of-way, or in any substantial detriment to the service, and that such public utilities have failed to agree upon such use or the terms and conditions or compensation for the same, the commission by order may direct that such use be permitted and prescribe reasonable compensation and reasonable terms and conditions for the joint use. If such use is directed, the public utility to whom the use is permitted shall be liable to the owner or other users of such conduits, subways,

tracks, wires, poles, pipes, other equipment, or railroad right-of-way, for such damage as may result therefrom to the property of such owners or other users thereof.

(2) In proceedings arising out of a complaint requesting the commission to authorize and determine appropriate compensation to be paid by a public utility to install its own facilities across a railroad right-of-way in a manner and location compatible with railroad use of the right-of-way, the commission may require the parties involved in the proceeding to reimburse the commission for the reasonable expenses, attorney fees, and expert witness fees the commission incurs in making its determination. Any fee collected pursuant to this section shall be remitted to the state treasurer, who shall credit such fee to the public utilities commission fixed utility fund created pursuant to section 40-2-114.

(3) Nothing in this section shall be construed to limit the right of a public utility to exercise the power of eminent domain to acquire property pursuant to applicable law.

(4) For purposes of this section, with respect to crossing of railroad rights-of-way by a public utility, the term "public utility" shall include power authorities organized under section 29-1-204, C.R.S. The term "public utility" shall also include municipal utilities and cooperative electric associations otherwise exempt from this article.

Source: L. 13: p. 478, § 28. C.L. § 2939. CSA: C. 137, § 29. CRS 53: § 115-4-5. C.R.S. 1963: § 115-4-5. L. 69: p. 934, § 23. L. 2002: Entire section amended, p. 1946, § 2, effective June 8.

Cross references: (1) For compensation ascertained by jury in eminent domain proceedings when demanded by owner, see § 15 of article II of the Colorado Constitution.

(2) For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 350, Session Laws of Colorado 2002.

40-4-106. Rules for public safety - crossings - allocation of expenses. (1) The commission shall have power, after hearing on its own motion or upon complaint, to make general or special orders, rules, or regulations or otherwise to require each public utility to maintain and operate its lines, plant, system, equipment, electrical wires, apparatus, tracks, and premises in such manner as to promote and safeguard the health and safety of its employees, passengers, customers, subscribers, and the public and to require the performance of any other act which the health or safety of its employees, passengers, customers, subscribers, or the public may demand.

(2) (a) The commission has the power to determine, order, and prescribe, in accordance with the plans and specifications to be approved by it, the just and reasonable manner including the particular point of crossing at which the tracks or other facilities of any public utility may be constructed across the facilities of any other public utility at grade, or above or below grade, or at the same or different levels, or at which the tracks or other facilities of any railroad corporation may be constructed across any public highway at grade, or above or below grade, or at which any public highway may be constructed across the tracks or other facilities of any railroad corporation at grade, or above or below grade and to determine, order, and prescribe the terms and conditions of installation and operation, maintenance, and warning at all such crossings that may be constructed, including the posting of personnel or the installation and regulation of lights, block, interlocking, or other system of signaling, safety appliance devices, or such other means or instrumentalities as may to the commission appear reasonable and necessary to the end, intent, and purpose that accidents may be prevented and the safety of the public promoted.

(b) Whenever the commission orders in any proceeding before it, regardless of by whom or how such proceeding was commenced, that automatic or other safety appliance signals or devices be installed, reconstructed, or improved and operated at any crossing at grade of any public highway or road over the tracks of any railroad corporation, the commission shall also determine and order, after notice and hearing, how the cost of installing, reconstructing, or improving such signals or devices shall be divided between and paid by the interested railroad corporation whose tracks are located at the crossing on the one hand and the highway operations and maintenance division and the interested city, city and county, town, county, or other political subdivision of the state on the other hand.

In determining how much of the cost shall be paid by the railroad corporation, consideration shall be given to the benefit, if any, that will accrue from the signals or devices to the railroad corporation, but in every case the part to be paid by the railroad corporation shall be not less than twenty percent of the total cost of the signals or devices at any crossing, and the orders shall provide that every signal or device installed shall be maintained by such railroad corporation for the life of the crossing to be so signalized. In order to compensate for the use of the crossings by the public generally, the commission shall also order that such part of the cost of installing, reconstructing, or improving the signals or devices as will not be paid by the railroad corporation be divided between the highway-rail crossing signalization fund and the city, town, city and county, county, or other political subdivision in which the crossing is located, and the commission shall fix in each case the amount to be paid from the highway-rail crossing signalization fund and the amount to be paid by the city, town, city and county, county, or other political subdivision. Any order of the commission under this section for the payment of any part of any such costs from the highway-rail crossing signalization fund shall be authority for the state treasurer to pay out of said fund to the person, firm, or corporation entitled thereto under the commission's order the amount so determined to be paid from said fund. The requirement of notice and hearing in this section is deemed to have been complied with by the commission's giving notice of and holding a hearing upon the question of whether any such signals or devices are required at any crossing; but in such cases the notice shall state that the question of how the costs will be borne and paid will be considered at and determined as a result of the hearing for which the notice is given. This paragraph (b) shall not apply to any grade crossing when all or any part of the cost of the installation, reconstruction, or improvement of the signals or devices at the crossing will be paid from funds available under any federal or federal-aid highway act.

(3) (a) (I) The commission also has power upon its own motion or upon complaint and after hearing, of which all the parties in interest including the owners of adjacent property shall have due notice, to order any crossing constructed at grade or at the same or different levels to be relocated, altered, or abolished, according to plans and specifications to be approved and upon just and reasonable terms and conditions to be prescribed by the commission, and to prescribe the terms upon which the separation should be made and the proportion in which the expense of the alteration or abolition of the crossing or the separation of the grade should be divided between the railroad corporations affected or between the corporation and the state, county, municipality, or public authority in interest.

(II) Notwithstanding the provisions of subparagraph (I) of this paragraph (a), the affected railroad corporation, the commission, the department of transportation, or the local government responsible for supervising and maintaining the intersecting public highway or road may abolish any crossing at grade of any public highway or road over the tracks of a corporation if:

(A) The crossing is without gates, signals, alarm bells, or warning personnel and is located within one-quarter mile of a crossing with gates, signals, alarm bells, or warning personnel or a separated grade crossing;

(B) The crossing is not the only crossing that provides access to property;

(C) No less than sixty days prior to the proposed abolition date, the railroad corporation, commission, department of transportation, or local government posts conspicuous notice of the proposed abolition at the crossing and gives written notice of the proposed abolition to all other entities authorized to initiate abolition of the crossing pursuant to this subparagraph (II); and

(D) Neither any entity given notice nor any other interested party files an objection to the abolition pursuant to subparagraph (III) of this paragraph (a).

(III) A crossing shall not be abolished pursuant to subparagraph (II) of this paragraph (a) if an entity given notice pursuant to sub-subparagraph (C) of subparagraph (II) of this paragraph (a) or any other interested party, within sixty days of receiving such notice, files with the commission and provides to the entity that gave notice of the proposed abolition a written objection to the abolition. The written objection shall include a statement by a professional engineer licensed to practice in Colorado that indicates that the engineer is familiar with the requirements of subparagraph (II) of this paragraph (a) and all relevant

aspects of the crossing and has examined the crossing and believes that it is safe as designed. However, nothing in this subparagraph (III) shall preclude the abolition of the crossing pursuant to subparagraph (I) of this paragraph (a).

(b) (I) (A) The commission is authorized to approve individual projects wherein the allocation of the total expenses of the separation of grades to be paid by the railroad corporation or railroad corporations may exceed two million five hundred thousand dollars. The commission may approve more than one project, the sum totals of which may exceed the two-million-five-hundred-thousand-dollar cap set forth in this subparagraph (I), but in no event shall an individual class I railroad corporation pay more than two million five hundred thousand dollars of the cost of a single project or the cost of more than one project in any calendar year. Nothing in this subparagraph (I) shall preclude any railroad corporation from voluntarily contributing more than its allotted share for grade separation construction in one year, and, in such event, all amounts contributed by such railroad exceeding its allotted share in any one year shall be credited to and shall serve to reduce any payment for grade separation construction expenses by that railroad in subsequent years.

(B) Repealed.

(II) If the cost of a project is such that it calls for payment by a railroad corporation in more than one calendar year or if the amount due from the railroad corporation exceeds two million five hundred thousand dollars and thus must be made in consecutive calendar years, nothing in this section shall be construed to require that the approved project must be subjected to reapplication or rereview by the commission.

(III) In determining how much of the total expense of the separation of grades shall be paid by the railroad corporation or railroad corporations and by the state, county, municipality, or public authority in interest, consideration shall be given to the benefits, if any, which accrue from the grade separation project and the responsibility for need, if any, for such project. The railroad corporation or railroad corporations and the state, county, municipality, or public authority in interest shall share the costs for that portion of the project which separates the grades and constructs the approaches thereto. The commission shall consider the costs of obtaining rights-of-way, the costs of construction, and the costs of engineering. To the extent that the requirements of the railroad corporation or railroad corporations and the state, county, municipality, or public authority in interest generate additional costs beyond that necessary to provide the grade separation, such costs shall be borne by the responsible entity.

(IV) This paragraph (b) shall not apply to any project for the elimination of hazards at any railway-highway crossing when all or any part of the cost of such project will be paid from moneys made available for expenditure under title 23, U.S.C.; except that any amount paid by a railroad corporation for such an exempt project shall be credited against the two-million-five-hundred-thousand-dollar cap set forth in subparagraph (I) of this paragraph (b).

(c) (I) The state, county, municipality, or public authority, at its discretion, may withdraw its request for allocation determination at any time prior to the issue of the final order of the commission.

(II) The state, county, municipality, or public authority, at its discretion, after the hearing and prior to final order of the commission, may make a motion for a declaratory ruling on the cost allocation. In response to such a request, the commission shall make a declaratory ruling and shall provide the movant reasonable time to withdraw the request for allocation determination.

(III) After the final order is issued, the project shall proceed, unless the commission revises the order after consideration of a request for change by the state, county, municipality, or public authority in interest.

(d) The commission shall not order the abolition of any crossing for which a grade separation is determined to be necessary until this separation is constructed.

(e) and (f) Repealed.

(4) Repealed.

p. 758, § 1. **C.R.S. 1963:** § 115-4-6. **L. 65:** p. 926, § 1. **L. 69:** pp. 935, 964, §§ 24, 75. **L. 72:** p. 615, § 144. **L. 80:** (4) added, p. 750, § 1, effective April 16. **L. 81:** (1) amended, p. 1918, § 1, effective June 19. **L. 83:** (3) amended, p. 1558, § 1, effective July 1. **L. 86:** (3)(b) and (3)(c) R&RE and (3)(e) and (3)(f) repealed, pp. 1157, 1158, §§ 1, 2, effective July 1. **L. 91:** (2)(b) amended, p. 1075, § 62, effective July 1. **L. 93:** (3)(b)(I)(B) repealed, p. 2063, § 15, effective July 1. **L. 99:** (3)(b)(I), (3)(b)(II), and (3)(b)(IV) amended, p. 140, § 1, effective August 4. **L. 2003:** (2)(b) amended, p. 1702, § 11, effective May 14. **L. 2007:** (3)(a) amended, p. 313, § 1, effective August 3. **L. 2008:** (2) amended, p. 1794, § 12, effective July 1.

Editor's note: Subsection (4)(b) provided for the repeal of subsection (4), effective July 1, 1982. (See L. 80, p. 750.)

Cross references: For liability under provisions of subsection (2) of this section, see § 43-4-216; for rule-making procedures, see article 4 of title 24.

ANNOTATION

Commission to determine property required by railroad. The public utilities commission has the power to determine what property a condemning railroad can use as a "particular point of crossing", so the commission determines what property the railroad requires. *Colo. & S. Ry. v. District Court*, 177 Colo. 162, 493 P.2d 657 (1972).

Commission's approval not necessary before condemnation for certain construction by railroad. Approval of the public utilities commission for the construction of dust levees by a railroad is not required as a prerequisite to the condemnation of lands required for the proposed construction. *Buck v. District Court*, 199 Colo. 344, 608 P.2d 350 (1980).

No power to open street across right-of-way. The public utilities commission has no power by an order, without proceedings in eminent domain, to open a street across a railroad right-of-way. *Chicago, B. & Q. R. R. v. Pub. Utils. Comm'n*, 69 Colo. 275, 193 P. 726 (1920).

Commission's exercise of authority. In the interest of public safety, the public utilities commission has authority to order electric company to bury or relocate a transmission line which constitutes a safety hazard for an airport, and such authority may be exercised whether or not the commission participated in the prior approval of the location of such line. The statute is not an unlawful delegation of power to an administrative agency. *Mountain View Elec. Ass'n v. P.U.C.*, 686 P.2d 1336 (Colo. 1984).

Section applicable to construction of apportionment of costs for viaducts. The construction of an apportionment of costs for viaducts is not such a subject as was intended to fall

within the domain of local self-government, and therefore § 35 of art. V, Colo. Const., (delegation of power) does not prohibit the public utility commission's exercise of powers granted it under this section. *Denver & R. G. W. R. R. v. City & County of Denver*, 673 P.2d 354 (Colo. 1983).

Section empowers commission to apportion cost of constructing railroad crossing protection devices between the railroad that owns the track on one hand and the department of highways, and interested town, city, or county on the other hand, with a portion of the latter cost allocable to the highway crossing protection fund to compensate for general public benefit. *Union P. R. R. v. Pub. Utils. Comm'n*, 170 Colo. 514, 463 P.2d 294 (1969).

Subsection (3)(b) supersedes city charter. The construction of an apportionment of costs for viaducts is a matter of mixed local and state-wide concern, and where there is a conflict between a city charter and subsection (3)(b) (costs for grade separation projects), this section must supersede the charter. *Denver & R. G. W. R. R. v. City & County of Denver*, 673 P.2d 354 (Colo. 1983).

Commission held not to have abused its discretion in the allocation of grade separation costs between the city of Denver and the affected railroads pursuant to subsection (3) (c) (I) of this section (now subsection (3) (b) (III)). *Atchison, Topeka & Santa Fe Ry. v. P.U.C.*, 763 P.2d 1037 (Colo. 1988).

Applied in *Hassler & Bates Co. v. Pub. Utils. Comm'n*, 168 Colo. 183, 451 P.2d 280 (1969); *City of Craig v. Pub. Utils. Comm'n*, 656 P.2d 1313 (Colo. 1983).

40-4-107. Time limit regulations. (Repealed)

Source: **L. 13:** p. 479, § 30. **C.L.** § 2941. **CSA:** C. 137, § 31. **CRS 53:** § 115-4-7. **C.R.S. 1963:** § 115-4-7. **L. 69:** p. 936, § 25. **L. 2008:** Entire section repealed, p. 1796, § 13, effective July 1.

40-4-108. Standards for electricity, gas, and water. The commission has power, after hearing upon its own motion or upon complaint, to ascertain and fix just and reasonable standards, classifications, regulations, practices, measurements, or service to be furnished, imposed, observed, and followed by all electric, gas, and water public utilities; to ascertain and fix adequate and serviceable standards for the measurement of quantity, quality, pressure, initial voltage, or other condition pertaining to the supply of the product, commodity, or service furnished or rendered by any such public utility; to prescribe reasonable regulations for the examination and testing of such product, commodity, or service and for the measurement thereof; to establish reasonable rules, regulations, specifications, and standards to secure the accuracy of all meters and equipment for measurement and weighing; and to provide for the examination and testing of any and all equipment used for the measurement or weighing of any product, commodity, or service of any such public utility.

Source: L. 13: p. 479, § 31. C.L. § 2942. CSA: C. 137, § 32. CRS 53: § 115-4-8. C.R.S. 1963: § 115-4-8. L. 69: p. 936, § 26.

40-4-109. Entry to premises - testing meters. (1) The commissioners and their officers and employees have power to enter upon any premises occupied by any public utility for the purpose of making the examination and tests and exercising any of the other powers provided for in articles 1 to 7 of this title and to set up and use on such premises any equipment necessary therefor. The agents and employees of such public utility have the right to be present at the making of such examinations and tests.

(2) Any consumer or user of any product, commodity, or service of a public utility may have any equipment used in the measurement thereof tested upon paying the fees fixed by the commission. The commission shall establish and fix reasonable fees to be paid for testing such equipment on the request of the consumer or user, the fee to be paid by the consumer or user at the time of his request but to be paid by the public utility and repaid to the consumer or user if the equipment is found defective or incorrect to the disadvantage of the consumer or user under such rules and regulations as may be prescribed by the commission.

Source: L. 13: p. 479, § 31. C.L. § 2942. CSA: C. 137, § 32. CRS 53: § 115-4-9. C.R.S. 1963: § 115-4-9. L. 69: p. 937, § 27.

Cross references: For standards for and the testing of weights and measures generally, see article 14 of title 35.

40-4-110. Valuations of property. The commission has power to ascertain the value of the property of every public utility in this state and the facts which in its judgment have or may have any bearing on such value. The commission has power to make revaluations from time to time and to ascertain all new construction, extensions, and additions to the property of every public utility.

Source: L. 13: p. 480, § 32. C.L. § 2943. CSA: C. 137, § 33. CRS 53: § 115-4-10. C.R.S. 1963: § 115-4-10.

Cross references: For hearings in valuation matters, see § 40-6-118.

ANNOTATION

Commission has duty to ascertain value of utility's plant. In considering the reasonableness of a rate, it was the duty of the commission to ascertain the reasonable present value of the public utility's plant and also to investigate the arbitrary amounts set aside for depreciation and

surplus. *Ohio & Colo. Smelting & Ref. Co. v. Pub. Utils. Comm'n*, 68 Colo. 137, 187 P. 1082 (1920).

Utility corporation is entitled to fair return upon reasonable value of its property at the time it is being used for the public. *Ohio &*

Colo. Smelting & Ref. Co. v. Pub. Utils. Comm'n, 68 Colo. 137, 187 P. 1082 (1920).

Section contemplates full hearing on value, which affords the utility its opportunity to pres-

ent its evidence of value. Pub. Utils. Comm'n v. Northwest Water Corp., 168 Colo. 154, 451 P.2d 266 (1969).

40-4-111. Uniform system of accounts prescribed. The commission has power to establish a system of accounts to be kept by all public utilities, or to classify said public utilities and to establish a system of accounts for each class, and to prescribe the manner in which such accounts shall be kept. It may also in its discretion prescribe the forms of accounts, records, and memoranda to be kept by such public utilities, including the accounts, records, and memoranda of the movement of traffic as well as the receipts and expenditures of moneys and any other forms, records, and memoranda that in the judgment of the commission may be necessary to carry out the provisions of articles 1 to 7 of this title. The system of accounts established by the commission and the forms of accounts, records, and memoranda prescribed by it shall not be inconsistent in the case of corporations subject to the provisions of the federal "Interstate Commerce Act", Part I, 49 U.S.C., sec. 1 et seq., with the systems and forms from time to time established for such corporations by the surface transportation board; but nothing contained in this section shall affect the power of the commission to prescribe forms of accounts, records, and memoranda covering information in addition to that required by the surface transportation board. The commission, after hearing upon its own motion or upon complaint, may prescribe by order the accounts in which particular outlays and receipts shall be entered, charged, or credited. Where the commission has prescribed the forms of accounts, records, or memoranda to be kept by any public utility for any of its business, it shall thereafter be unlawful for such public utility to keep any accounts, records, or memoranda for such business other than those so prescribed, or those prescribed by or under the authority of any other state or of the United States, excepting such accounts, records, or memoranda as are explanatory of and supplemental to the accounts, records, or memoranda prescribed by the commission.

Source: L. 13: p. 480, § 33. C.L. § 2944. CSA: C. 137, § 34. CRS 53: § 115-4-11. C.R.S. 1963: § 115-4-11. L. 2001: Entire section amended, p. 1281, § 60, effective June 5.

ANNOTATION

Law reviews. For article, "Generation and Transmission Loan Policy Under the Rural Electrification Act", see 43 Den. L.J. 269 (1966).

40-4-112. Depreciation account - rules. The commission has power, after hearing, to require any or all public utilities to carry a proper and adequate depreciation account in accordance with such rules, regulations, and forms of accounts as the commission may prescribe. The commission, from time to time, may determine and by order fix the proper and adequate rates of depreciation of the several classes of property of each public utility, and each public utility shall conform its depreciation accounts to the rates so determined.

Source: L. 13: p. 481, § 34. C.L. § 2945. CSA: C. 137, § 35. CRS 53: § 115-4-12. C.R.S. 1963: § 115-4-12. L. 69: p. 937, § 28.

40-4-113. Evaluation of retail electric industry structure - study - repeal. (Repealed)

Source: L. 98: Entire section added, p. 860, § 1, effective May 26. L. 99: (4)(d) amended, p. 657, § 1, effective May 18.

Editor's note: Subsection (6) provided for the repeal of this section, effective December 31, 2000. (See L. 98, p. 860.)

40-4-114. Funding and appropriations - retail electricity policy development fund - creation - repeal. (Repealed)

Source: L. 98: Entire section added, p. 867, § 1, effective May 26.

Editor's note: Subsection (2) provided for the repeal of this section, effective December 31, 2000. (See L. 98, p. 867.)

40-4-115. Reliable electricity infrastructure - task force - repeal. (Repealed)

Source: L. 2006: Entire section added, p. 831, § 2, effective May 4.

Editor's note: Subsection (5) provided for the repeal of this section, effective December 31, 2006. (See L. 2006, p. 831.)

40-4-116. Renewable resource generation development areas - task force - fund - definitions - repeal. (Repealed)

Source: L. 2007: Entire section added, p. 1340, § 1, effective May 29.

Editor's note: Subsection (7) provided for the repeal of this section, effective December 31, 2007. (See L. 2007, p. 1340.)

40-4-117. Integrated transmission facility planning - review by commission - report - repeal. (Repealed)

Source: L. 2009: Entire section added, (HB 09-1345), ch. 356, p. 1858, § 2, effective June 1.

Editor's note: Subsection (6) provided for the repeal of this section, effective July 1, 2011. (See L. 2009, p. 1858.)

40-4-118. Colorado smart grid task force - fund - definition - reports - repeal.

(1) **Task force.** (a) There is hereby created the Colorado smart grid task force, also referred to in this section as the "task force". The task force shall provide technical expertise and strategic policy recommendations, from a statewide perspective, to the commission and the general assembly. The task force's primary task is to produce a report containing recommendations and analysis on the feasibility, cost, and timing of transitioning to a secure, resilient, and technologically advanced electric grid, also referred to in this section as the "smart grid", in Colorado for use by Colorado residents, business, and governmental agencies.

(b) The task force shall elect a chair and a vice-chair from its members at its first meeting.

(c) In collecting information for its report, the task force shall:

(I) Hold at least four meetings, which shall be open to the public. The task force shall solicit and receive comments, including written comments, from members of the public. The task force may determine the manner in which such comments are received.

(II) Consider and give weight to any comments received from the general public as well as written comments from affected counties, cities, state agencies, electric utilities and their customers, environmental groups, and other interested stakeholders;

(III) Consider and give weight to research papers and technical information made available through current research projects at the commission and academic institutions and from private citizens; and

(IV) Take notice of proceedings before the commission addressing smart grid development, confer with commissioners and commission staff, and consider and give weight to the records, findings, and decisions in those proceedings.

(2) **Membership.** (a) The task force consists of eleven members as follows:

(I) The director of the Colorado energy office, created in section 24-38.5-101, C.R.S., or his or her designee, who shall convene the task force and who is authorized to contract with a mediator or other third party to facilitate accomplishment of the task force's duties;

(II) Six members appointed by the governor as follows:

(A) Two members representing investor-owned electric utilities;

(B) One member representing municipal utilities;

(C) One member representing cooperative electric associations;

(D) One member with expertise in energy policy and regulation at the state and federal level; and

(E) One member with expertise in environmental issues.

(III) Four members representing the following constituencies and with the following areas of expertise, of whom one shall be appointed by the president of the senate, one shall be appointed by the minority leader of the senate, one shall be appointed by the speaker of the house, and one shall be appointed by the minority leader of the house:

(A) One member representing commercial developers of smart grid software, hardware, or services and with a background in capital and business development;

(B) One member representing consumer protection;

(C) One member representing academic research and development of smart grid technology; and

(D) One member with expertise in engineering standards, protocols, and technical requirements for smart grid deployment.

(b) Members of the task force shall be appointed within thirty days after June 11, 2010.

(c) Vacancies shall be filled by appointment by the official who appointed the member whose absence resulted in the vacancy.

(3) **Duties - initial report - updates - issues.** (a) The task force shall develop an initial report, designated the 2011 Colorado smart grid report, in which the task force addresses and makes recommendations for the following:

(I) Issues related to the utility side of the meter in the development of a smart grid, including:

(A) Grid reliability;

(B) Grid efficiency;

(C) Outage restoration and recovery;

(D) Distributed generation integration;

(E) Transportation electrification; and

(F) System integration of renewable and conventional sources of electric power generation;

(II) Issues related to the customer side of the meter in the development of a smart grid, including:

(A) Consumer metering protocols;

(B) Driving increases in consumer efficiency;

(C) Providing effective consumer information;

(D) Integration of demand response programs; and

(E) Integration of variable pricing mechanisms; and

(III) Potential impacts from the development of a smart grid, including:

(A) Consumer protection and privacy;

(B) Cyber security;

(C) Communication and technical standards;

(D) Workforce and economic development issues;

(E) Energy efficiency and demand response; and

(F) Emissions from electric generation.

(b) The task force shall periodically revisit the issues set forth in paragraph (a) of this subsection (3) and update the report with new information or recommendations as the task force deems advisable.

(4) **Timeline.** The task force shall produce and deliver its initial report under subsection (3) of this section to the governor, the commission, and the general assembly on or before

January 20, 2011, and shall meet at least annually thereafter to review the report, receive additional information, and consider updates to the report.

(5) **Funding.** (a) The Colorado energy office may accept private gifts, grants, and donations for the purpose of providing support to the task force to perform its responsibilities specified in this section. Any such gifts, grants, and donations shall be held in a separate account within the innovative energy fund created in section 24-38.5-102.5, C.R.S., and shall be available to the office and the task force only for the purpose of carrying out the task force’s duties under this section. The account shall also consist of moneys appropriated and transferred to the account. Any unexpended or unencumbered moneys remaining in the account as of January 1, 2015, shall revert to the clean and renewable energy fund created in section 24-38.5-102.4, C.R.S., to be used by the Colorado energy office.

(b) It is the intent of the general assembly that the Colorado energy office not be required to solicit gifts, grants, or donations from any source for the purposes of this section and that no general fund moneys be used to pay for grants awarded pursuant to this section or for any expenses of the task force.

(c) If, by June 1, 2010, moneys in the account created pursuant to paragraph (a) of this subsection (5) have not reached an amount sufficient to pay the expenses of the task force, the task force shall not meet nor undertake any other duties pursuant to this section, and the Colorado energy office shall return to each grantor or donor an amount equal to such grantor’s or donor’s contribution. The interest, if any, earned from the investment of moneys in the account shall be transferred to the general fund.

(6) **Definition.** As used in this section, “smart grid” means a system for electric transmission or distribution within the certificated service territory of an electric utility that incorporates one or more of the following functionalities:

(a) Enabling consumers to participate actively in managing their electric consumption using information, control, and options for energy efficiency not previously available to consumers;

- (b) Integrating electrical systems using universal interoperability standards;
 - (c) Monitoring, diagnosing, and responding to power quality deficiencies;
 - (d) Optimizing the use of system assets and enhancing overall efficiency through improved load factors and better management of outages;
 - (e) Anticipating and automatically responding to system deficiencies;
 - (f) Operating resiliently when confronted with a cyber-attack or natural disaster; and
 - (g) Optimizing efficiency and demand response.
- (7) **Repeal.** This section is repealed, effective July 1, 2015.

Source: L. 2010: Entire section added, (SB 10-180), ch. 428, p. 2231, § 1, effective June 11. **L. 2012:** (2)(a)(I) and (5) amended, (HB 12-1315), ch. 224, p. 980, § 49, effective July 1.

40-4-119. Siting of electric transmission facilities - task force - repeal. (Repealed)

Source: L. 2011: Entire section added, (SB 11-045), ch. 288, p. 1338, § 1, effective June 3.

Editor’s note: Subsection (6) provided for the repeal of this section, effective December 31, 2011. (See L. 2011, p. 1338.)

ARTICLE 5

New Construction - Extension

40-5-101.	New construction - extension - compliance with local zoning rules.	40-5-103.	nience and necessity. Certificate - application for - issuance.
40-5-102.	Certificate of public conveyance.	40-5-104.	Acquisition by municipality.

40-5-105. Certificate or assets may be sold, assigned, or leased.

40-5-106. Designation for service of process.

40-5-101. New construction - extension - compliance with local zoning rules.

(1) (a) A public utility shall not begin the construction of a new facility, plant, or system or the extension of its facility, plant, or system without first obtaining from the commission a certificate that the present or future public convenience and necessity require, or will require, the construction or extension. For purposes of this subsection (1), the present or future public convenience and necessity does not include the consideration of land use rights or siting issues related to the location or alignment of the proposed electric transmission lines or associated facilities, which issues are under the jurisdiction of a local government's land use regulation. Sections 40-5-101 to 40-5-104 do not require a corporation to secure a certificate for the following:

(I) An extension within any city and county, city, or town within which it has already lawfully commenced operations;

(II) An extension into territory, either within or outside of a city and county, city, or town, contiguous to its facility, line, plant, or system and not already served by a public utility providing the same commodity or service; or

(III) An extension within or to territory already served by the corporation, as is necessary in the ordinary course of its business.

(b) If a public utility, in constructing or extending its line, plant, or system, interferes, or is about to interfere, with the operation of the line, plant, or system of any other public utility already constructed, the commission, upon complaint of the public utility claiming to be injuriously affected, after hearing, may prohibit the construction or extension or prescribe just and reasonable terms and conditions for the location of the lines, plants, or systems affected.

(2) Whenever the commission, after a hearing upon its own motion or upon complaint, finds that there is or will be a duplication of service by public utilities in any area, the commission may issue a certificate of public convenience and necessity assigning specific territories to one or to each of said utilities or, by certificate of public convenience and necessity, otherwise define the conditions of rendering service and constructing extensions within those territories and may order the elimination of the duplication upon such terms as are just and reasonable, having due regard to due process of law and to all the rights of the respective parties and to public convenience and necessity.

(3) Except as otherwise provided in section 29-20-108, C.R.S., a public utility shall not construct or install a new facility, plant, or system within the territorial boundaries of a local government unless the construction or installation complies with the local government's zoning rules, resolutions, or ordinances. Nothing in this subsection (3) prohibits a local government from granting a variance from its zoning rules, resolutions, or ordinances for such uses of the property. Nothing in this subsection (3) grants the commission any additional authority to restrict a siting application. For purposes of this section, "local government" means a county, home rule or statutory city, town, territorial charter city, or city and county. Nothing in this subsection (3) restricts the right of a public utility or power authority to appeal to the public utilities commission a local government action under section 29-20-108, C.R.S.

(4) (a) A public utility is entitled to recover, through a separate rate adjustment clause, the costs that it prudently incurs in planning, developing, and completing the construction or expansion of transmission facilities for which the utility has been granted a certificate of public convenience and necessity, or for which the commission has determined that no certificate of public convenience and necessity is required. The transmission rate adjustment clause is subject to annual changes, which are effective on January 1 of each year.

(b) To provide additional encouragement to utilities to pursue the construction and expansion of transmission facilities, the commission shall approve current recovery by the utility through the annual rate adjustment clause of the utility's weighted average cost of capital, including its most recently authorized rate of return on equity, on the total balance of construction work in progress related to such transmission facilities as of the end of the immediately preceding year. The rate adjustment clause shall be reduced to the extent that

the prudently incurred costs being recovered through the adjustment clause have been included in the public utility's base rates as a result of the commission's final order in a rate case.

Source: L. 13: p. 481, § 35. L. 17: p. 418, § 1. C.L. § 2946. CSA: C. 137, § 36. CRS 53: § 115-5-1. L. 61: p. 628, § 2. C.R.S. 1963: § 115-5-1. L. 2005: (3) added, p. 1355, § 1, effective August 8. L. 2007: (4) added, p. 267, § 3, effective March 27. L. 2012: Entire section amended, (HB 12-1312), ch. 101, p. 339, § 2, effective April 12.

Cross references: (1) For the acquisition of public utilities by cities and towns, see § 40-5-104.

(2) For the legislative declaration contained in the 2007 act enacting subsection (4), see section 1 of chapter 61, Session Laws of Colorado 2007.

(3) For the legislative declaration in the 2012 act amending this section, see section 1 of chapter 101, Session Laws of Colorado 2012.

ANNOTATION

I. General Consideration.

II. Certification.

III. Police Power and Due Process.

I. GENERAL CONSIDERATION.

Law reviews. For article, "Coal Mining a Public Utility", see 12 Dicta 267 (1935). For article, "Generation and Transmission Loan Policy Under the Rural Electrification Act", see 43 Den. L.J. 269 (1966). For comment on Western Colo. Power Co. v. Pub. Utils. Comm'n, 159 Colo. 262, 411 P.2d 785, appeal dismissed, 385 U.S. 22, 87 S. Ct. 230, 17 L. Ed. 2d 21, reh'g denied, 385 U.S. 984, 87 S. Ct. 500, 17 L. Ed. 2d 445 (1966), appearing below, see 38 U. Colo. L. Rev. 626 (1966). For article, "May Regulated Utilities Monopolize the Sun?", see 56 Den. L.J. 31 (1979).

This section is constitutional. People ex rel. Hubbard v. Colo. Title & Trust Co., 65 Colo. 472, 178 P. 6 (1918); Pirie v. Pub. Utils. Comm'n, 72 Colo. 65, 209 P. 640 (1922).

Extensions and improvements are not to be made without approval of public utilities commission. If such improvements are found unprofitable, the company must be loser. It will not be permitted to charge the loss to the public. Ohio & Colo. Smelting & Ref. Co. v. Pub. Utils. Comm'n, 68 Colo. 137, 187 P. 1082 (1920).

Showing that existing sources are inadequate and unavailable required. Under this section, it is incumbent upon the applicant to "tip the scales" in the direction that duplication will not result from its proposed action. In doing this, it must show that there is a need for the additional construction which necessarily involves showing that the existing sources are not, and will not be, reasonably adequate and available. Pub. Serv. Co. v. Pub. Utils. Comm'n, 142 Colo. 135, 350 P.2d 543, cert. denied, 364 U.S. 820, 81 S. Ct. 53, 5 L. Ed. 2d 50 (1960); W. Colo. Power Co. v. Pub. Utils. Comm'n, 159 Colo. 262, 411 P.2d 785, appeal dismissed, 385

U.S. 22, 87 S. Ct. 230, 17 L. Ed. 2d 21, reh'g denied, 385 U.S. 984, 87 S. Ct. 500, 17 L. Ed. 2d 445 (1966).

This burden of demonstrating that the proposed system is within the interest of public convenience and necessity embraces a showing not only that the proposed services will not duplicate existing services, but also that existing service is substantially inadequate to meet the public need. Contact-Colorado Springs, Inc. v. Mobile Radio Tel. Serv., Inc., 191 Colo. 180, 551 P.2d 203 (1976). Pub. Serv. Co. of Colo. v. Shaklee, 759 P.2d 774 (Colo. App. 1988), rev'd on other grounds 784 P.2d 314 (Colo. 1989).

Substantial evidence necessary to justify need for proposed extension of service does not depend upon the number of witnesses produced. Kuboske v. Pub. Utils. Comm'n, 187 Colo. 38, 528 P.2d 248 (1974).

Fact of existing lines of only one utility in area is prima facie proof that utility is adequately meeting the needs of the area, and the public utilities commission gave proper recognition to this by granting such areas to the utility actually rendering service. Pub. Utils. Comm'n v. Home Light & Power Co., 163 Colo. 72, 428 P.2d 928 (1967).

First in field should be given opportunity to supply any needed service before any other is given the privilege of competing with it. Pub. Serv. Co. v. Pub. Utils. Comm'n, 142 Colo. 135, 350 P.2d 543, cert. denied, 364 U.S. 820, 81 S. Ct. 53, 5 L. Ed. 2d 50 (1960).

Under regulation existing suppliers are entitled to serve all desiring service, whether they be existing or potential customers. W. Colo. Power Co. v. Pub. Utils. Comm'n, 159 Colo. 262, 411 P.2d 785, appeal dismissed, 385 U.S. 22, 87 S. Ct. 230, 17 L. Ed. 2d 21, reh'g denied, 385 U.S. 984, 87 S. Ct. 500, 17 L. Ed. 2d 445 (1966).

Expansion into contiguous territory permitted when necessary. The general assembly sought to permit extensions without further ap-

plication outside certificated territory which is contiguous to certificated territory, when the extensions are necessary in the ordinary course of business. *Western Colo. Power Co. v. Pub. Utils. Comm'n*, 163 Colo. 61, 428 P.2d 922 (1967).

Only limitation placed on expansion of its contiguous territory by certificated public utility is that it not expand into an area theretofore served by a public utility of like character. *Pub. Serv. Co. v. Pub. Utils. Comm'n*, 142 Colo. 135, 350 P.2d 543, cert. denied, 364 U.S. 820, 81 S. Ct. 53, 5 L.Ed.2d 50 (1960).

Where utility has not expanded actual service into contiguous territory, that territory remains open for certification by usual standards. *Western Colo. Power Co. v. Pub. Utils. Comm'n*, 163 Colo. 61, 428 P.2d 922 (1967).

Commission is authorized to issue certificates of public convenience and necessity when material, competent, and sufficient evidence is presented to support the conclusion that the public convenience and necessity requires the proposed service. *Contact-Colorado Springs, Inc. v. Mobile Radio Tel. Serv., Inc.*, 191 Colo. 180, 551 P.2d 203 (1976).

The commission may issue a retroactive certificate of public convenience and necessity if the issuance of such certificate is in the public interest. *City of Boulder v. Colo. Pub. Utils. Comm'n*, 996 P.2d 1270 (Colo. 2000).

Doctrine of regulated monopoly does not permit a customer to pick and choose between utilities. The doctrine is designed to protect the interests of the public as a whole, not to protect the needs of the individual consumer. *Pub. Serv. Co. v. P.U.C.*, 765 P.2d 1015 (Colo. 1988).

The consent of both the municipality and the public utilities commission is necessary to operate a public utility within a home rule city, but neither the general assembly nor the public utilities commission is empowered to grant a franchise to a public utility to use the streets, alleys, and public places of a home rule municipality without the municipality's consent. *City of Greeley v. Poudre Valley R. Elec.*, 744 P.2d 739 (Colo. 1987), appeal dismissed for want of a properly presented federal question, 485 U.S. 949, 108 S. Ct. 1207, 99 L.Ed.2d 409 (1988).

The public utilities commission cannot authorize a power company operating pursuant to a certificate of public convenience and necessity in an area annexed by a home rule municipality to expand its system and use city streets without obtaining a franchise from such municipality. *City of Greeley v. Poudre Valley R. Elec.*, 744 P.2d 739 (Colo. 1987), appeal dismissed for want of a properly presented federal question, 485 U.S. 949, 108 S. Ct. 1207, 99 L.Ed.2d 409 (1988).

Court of appeals erred in reversing district court decree in condemnation and order for

immediate possession as Public Service Company was not required to seek certificate of public convenience and necessity in order to institute condemnation proceedings. *Pub. Serv. Co. v. Shaklee*, 784 P.2d 314 (Colo. 1989).

This section makes mandatory proof of public convenience and necessity prior to the construction of any new plant or system, subject to certain exceptions. *Pub. Serv. Co. v. Pub. Utils. Comm'n*, 142 Colo. 135, 350 P.2d 543, cert. denied, 364 U.S. 820, 81 S. Ct. 53, 5 L.Ed.2d 50 (1960); *W. Colo. Power Co. v. Pub. Utils. Comm'n*, 159 Colo. 262, 411 P.2d 785, appeal dismissed, 385 U.S. 22, 87 S. Ct. 230, 17 L. Ed. 2d 21, reh'g denied, 385 U.S. 984, 87 S. Ct. 500, 17 L. Ed. 2d 445 (1966).

Applied in *Greeley Transp. Co. v. People*, 79 Colo. 307, 245 P. 720 (1926).

II. CERTIFICATION.

Objective of section is to avoid duplication of sources of power in public interest. The law, therefore, subjects proposals for new, or expanded, construction to the judgment of the commission and in such cases the applicant must make an affirmative showing that the purpose of this section will not be defeated. *Pub. Serv. Co. v. Pub. Utils. Comm'n*, 142 Colo. 135, 350 P.2d 543, cert. denied, 364 U.S. 820, 81 S. Ct. 53, 5 L.Ed.2d 50 (1960); *W. Colo. Power Co. v. Pub. Utils. Comm'n*, 159 Colo. 262, 411 P.2d 785, appeal dismissed, 385 U.S. 22, 87 S. Ct. 230, 17 L. Ed. 2d 21, reh'g denied, 385 U.S. 984, 87 S. Ct. 500, 17 L. Ed. 2d 445 (1966); *Town of Fountain v. Pub. Utils. Comm'n*, 167 Colo. 302, 447 P.2d 527 (1968).

Generally, certificate to service region creates right to service customers in that region, unless it can be shown that the company is not ready and able to provide the services requested. *Rocky Mt. Natural Gas Co. v. Pub. Utils. Comm'n*, 199 Colo. 352, 617 P.2d 1175 (1980); *City of Greeley v. Poudre Valley R. Elec.*, 744 P.2d 739 (Colo. 1987), appeal dismissed for want of a properly presented federal question, 485 U.S. 949, 108 S. Ct. 1207, 99 L.Ed.2d 409 (1988).

If original certificate does not encompass proposed new service. The general rule that a certificate to service a region creates a right to serve customers in that region does not apply where the original certificate does not encompass the proposed new service. *Rocky Mt. Natural Gas Co. v. Pub. Utils. Comm'n*, 199 Colo. 352, 617 P.2d 1175 (1980).

Interruptible service not a substitute for firm service. Where municipal utility not willing and able to provide firm natural gas service to industrial customers within municipality, commission had authority to issue a certificate to a privately owned gas utility to provide firm service to those customers. *City of Fort Morgan*

v. Pub. Utils. Comm'n, 159 P.3d 87 (Colo. 2007).

Local permit not a condition precedent. This section does not prohibit the commission from issuing a certificate to a utility that has not received a local permit. *City of Fort Morgan v. Pub. Utils. Comm'n*, 159 P.3d 87 (Colo. 2007).

Where no lines exist in territories and there apparently is no present demand, such areas should not be certificated until such time as demand for service makes it economically practical for the utility or utilities near the area to file new applications for certificates. *Pub. Utils. Comm'n v. Home Light & Power Co.*, 163 Colo. 72, 428 P.2d 928 (1967); *Pub. Serv. Co. v. Pub. Utils. Comm'n*, 174 Colo. 470, 485 P.2d 123 (1971).

Utility does not have exclusive property right to expand in the future into uncertificated territories which would forever bar another public utility from being certificated in such contiguous uncertificated territory if a later certificate was granted, and if the certificated utility had not yet expanded into that uncertificated area. *Western Colo. Power Co. v. Pub. Utils. Comm'n*, 163 Colo. 61, 428 P.2d 922 (1967).

Utility having a prior certificate covering neighboring territory has legal authority to expand into unserved and uncertificated territory. *Pub. Utils. Comm'n v. Home Light & Power Co.*, 163 Colo. 72, 428 P.2d 928 (1967).

Exclusivity of a utility's certificate only precludes competition from other public utilities operating under the jurisdiction of the commission, and does not prevent a municipality from providing public utility services within its boundaries. *Union Rural Elec. Ass'n v. Town of Frederick*, 629 P.2d 1093 (Colo. App. 1981).

Showing necessary to permit certification of another utility in area. Once an area has been certificated by the commission to one public utility, the commission may not certificate another public utility to serve that area until a showing is made that the certificated utility is either unwilling or unable to serve an existing or newly developing load. *Union Rural Elec. Ass'n v. Town of Frederick*, 629 P.2d 1093 (Colo. App. 1981), *aff'd*, 670 P.2d 4 (Colo. 1983).

Intruding utility may not claim area already adequately served. Where a utility not subject to regulation builds lines into an area which is already completely and adequately served by another utility, the intruding utility may not later, upon becoming subject to regulation, claim the territory as its own and should be limited to serving its existing customers in such areas. *Western Colo. Power Co. v. Pub. Utils. Comm'n*, 163 Colo. 61, 428 P.2d 922 (1967); *Pub. Utils. Comm'n v. Home Light & Power Co.*, 163 Colo. 72, 428 P.2d 928 (1967); *Town of Fountain v. Pub. Utils. Comm'n*, 167 Colo. 302, 447 P.2d 527 (1968); *Pub. Serv. Co.*

v. Pub. Utils. Comm'n, 174 Colo. 470, 485 P.2d 123 (1971).

Where area is divided between two or more utilities and where lines are "hopelessly intermingled", the area is to be awarded to the utility having the most existing service in the area (the so-called "predominant utility"). *Pub. Utils. Comm'n v. Home Light & Power Co.*, 163 Colo. 72, 428 P.2d 928 (1967); *Pub. Serv. Co. v. Pub. Utils. Comm'n*, 174 Colo. 470, 485 P.2d 123 (1971).

As to division of areas where existing lines of competing public utilities are in close proximity to each other, where the commission has divided the areas in an attempt to allow each utility to maintain its present customers and to have its fair share of any expansion room that still remains, while this may not be entirely satisfactory to all parties, it is not an abuse of discretion. *Pub. Serv. Co. v. Pub. Utils. Comm'n*, 174 Colo. 231, 483 P.2d 1337 (1971).

Areas served almost exclusively by one utility, and yet virtually completely surrounded by lines of another utility (so-called "enclaves") are to be certificated to the utility actually rendering service to the enclaves, with the surrounding territory certificated to the utility actually rendering service there. *Pub. Serv. Co. v. Pub. Utils. Comm'n*, 174 Colo. 470, 485 P.2d 123 (1971).

Test to determine which utility will serve contested facilities. Where the electricity is used at a facility located solely within a utility's exclusive area, the facility is not physically interconnected with a facility outside the exclusive territory, and the facility was previously served by the utility in whose area it is located, the doctrine of regulated monopoly requires that the point of use test be applied to protect the rights of the certificated utility against encroachment. *Pub. Serv. Co. v. P.U.C.*, 765 P.2d 1015 (Colo. 1988).

III. POLICE POWER AND DUE PROCESS.

Utility's right to serve within its defined area constitutes property right which cannot be taken except by due process of law. *Western Colo. Power Co. v. Pub. Utils. Comm'n*, 163 Colo. 61, 428 P.2d 922 (1967); *Western Power & Gas Co. v. Southeast Colo. Power Ass'n*, 164 Colo. 344, 435 P.2d 219 (1967); *Mountain View Elec. Ass'n v. Pub. Utils. Comm'n*, 167 Colo. 200, 446 P.2d 424 (1968); *Town of Fountain v. Pub. Utils. Comm'n*, 167 Colo. 302, 447 P.2d 527 (1968); *Pub. Serv. Co. v. Pub. Utils. Comm'n*, 174 Colo. 470, 485 P.2d 123 (1971). *City of Greeley v. Poudre Valley R. Elec.*, 744 P.2d 739 (Colo. 1987), appeal dismissed for want of a properly presented federal question, 485 U.S. 949, 108 S. Ct. 1207, 99 L.Ed.2d 409 (1988).

Certificate holder must be afforded adequate notice and right to be heard whenever its authority to serve under a certificate is affected, or may be affected, by any grant of authority by the P.U.C. Pub. Utils. Comm'n v. DeLue, 175 Colo. 317, 486 P.2d 1050 (1971).

Due process requirements are held to have been satisfied if there is substantial evidence in the record to support a finding that the certificated utility is unwilling or unable to serve its certificated area, and that public convenience and necessity require the change. Town of Fountain v. Pub. Utils. Comm'n, 167 Colo. 302, 447 P.2d 527 (1968); Pub. Serv. Co. v. Pub. Utils. Comm'n, 174 Colo. 470, 485 P.2d 123 (1971).

Public utilities subject to regulation in exercise of police power. The activities of public

utilities in rendering service to the public are subject to reasonable regulation in the exercise of the police power. Western Power & Gas Co. v. Southeast Colo. Power Ass'n, 164 Colo. 344, 435 P.2d 219 (1967).

Violation of "due process" will not stay reasonable exercise of police power. Where there is a seeming conflict between an assertion that one is deprived of his property without "due process of law" on the one hand, and a reasonable exercise of the police power on the other, the latter takes precedence and a violation of "due process" cannot be asserted to stay the legitimate exercise of police power. Western Power & Gas Co. v. Southeast Colo. Power Ass'n, 164 Colo. 344, 435 P.2d 219 (1967).

40-5-102. Certificate of public convenience and necessity. No public utility shall exercise any right or privilege under any franchise, permit, ordinance, vote, or other authority granted after April 12, 1913, or under any franchise, permit, ordinance, vote, or other authority granted before April 12, 1913, but not actually exercised before said date or the exercise of which has been suspended for more than one year without first having obtained from the commission a certificate that public convenience and necessity require the exercise of such right or privilege. When the commission finds, after hearing, that a public utility has, before April 12, 1913, begun actual construction work and is prosecuting such work, in good faith, uninterruptedly, and with reasonable diligence in proportion to the magnitude of the undertaking, under any franchise, permit, ordinance, vote, or other authority granted before April 12, 1913, but not actually exercised before said date, such public utility may proceed, under such rules and regulations as the commission may prescribe, to the completion of such work and after such completion, may exercise such right or privilege. Sections 40-5-101 to 40-5-104 shall not be construed to validate any right or privilege invalid on April 12, 1913, or becoming invalid after said date under any law of this state.

Source: L. 13: p. 481, § 35. L. 17: p. 418, § 1. C.L. § 2946. CSA: C. 137, § 36. CRS 53: § 115-5-2. C.R.S. 1963: § 115-5-2.

ANNOTATION

Local permit not a condition precedent. This section does not prohibit the commission from issuing a certificate to a utility that has not received a local permit. City of Fort Morgan v. Pub. Utils. Comm'n, 159 P.3d 87 (Colo. 2007).

Generally, certificate to service region creates right to service customers in that region, unless it can be shown that the company is not ready and able to provide the services requested. Rocky Mt. Natural Gas Co. v. Pub. Utils. Comm'n, 199 Colo. 352, 617 P.2d 1175 (1980).

When original certificate does not encompass proposed new service. The general rule that a certificate to service a region creates a right to serve customers in that region does not apply where the original certificate does not encompass the proposed new service. Rocky Mt. Natural Gas Co. v. Pub. Utils. Comm'n, 199 Colo. 352, 617 P.2d 1175 (1980).

Certificate of public convenience and necessity is not necessary for purpose of con-

demnation and relates solely to the question of use after the property has been acquired by condemnation. Miller v. Pub. Serv. Co., 129 Colo. 513, 272 P.2d 283 (1954), appeal dismissed, 348 U.S. 923, 75 S. Ct. 338, 99 L. Ed. 724 (1955); Pub. Serv. Co. v. Shaklee, 784 P.2d 314 (Colo. 1989).

Certificate of public convenience and necessity is only a permit or license to use and enjoy land that has been condemned; it is not a condition precedent to the right to condemn; and has no relationship whatever with the matter of condemnation. Miller v. Pub. Serv. Co., 129 Colo. 513, 272 P.2d 283 (1954), appeal dismissed, 348 U.S. 925, 75 S. Ct. 338, 99 L. Ed. 724 (1955).

Instance in which certificate not required. Where a water system has been operating continuously from prior to the enactment of the original public utilities act, a certificate of public convenience and necessity is not required, and

the failure to obtain a certificate is not determinative of the system's status as a public utility. *Cady v. City of Arvada*, 31 Colo. App. 85, 499 P.2d 1203 (1972).

Applied in *Pub. Utils. Comm'n v. Watson*, 138 Colo. 108, 330 P.2d 138 (1958); *Denver Welfare Rights Org. v. Pub. Utils. Comm'n*, 190 Colo. 329, 547 P.2d 239 (1976).

40-5-103. Certificate - application for - issuance. (1) Before any certificate may issue under sections 40-5-101 to 40-5-104, a certified copy of its articles of incorporation or charter, if the applicant is a corporation, shall be filed in the office of the commission. Every applicant for a certificate to exercise franchise rights under section 40-5-102 shall file in the office of the commission such evidence as shall be required by the commission to show that such applicant has received the required consent, franchise, permit, ordinance, vote, or other authority of the proper county, city and county, or municipal or other public authority. The commission has the power to issue a certificate to exercise franchise rights after hearing, to refuse to issue the same, or to issue it for the partial exercise only of said right or privilege and may attach to the exercise of the rights granted by such certificate such terms and conditions as in its judgment the public convenience and necessity may require. Nothing contained in this subsection (1) shall be construed to limit or restrict the power and authority of the commission: To regulate, issue, or refuse to issue certificates of public convenience and necessity for construction of a new facility, plant, or system or of any extension thereof as provided in section 40-5-101; and to attach to the exercise of the rights granted by such certificate such terms and conditions as in the commission's judgment may be required by the public convenience and necessity.

(2) If such public utility desires to exercise a right or privilege under a franchise, permit, ordinance, vote, or other authority which it contemplates securing but which has not yet been granted to it, such public utility may apply to the commission for an order preliminary to the issue of the certificate. The commission may thereupon make an order declaring that it will thereafter, upon application, under such rules and regulations as it may prescribe issue the desired certificate upon such terms and conditions as it may designate after such public utility has obtained the contemplated franchise, permit, ordinance, vote, or other authority. Upon the presentation to the commission of evidence satisfactory to it that such franchise, permit, ordinance, vote, or other authority has been secured by such public utility, the commission shall thereupon issue such certificate.

Source: L. 13: p. 418, § 35. L. 17: p. 418, § 1. C.L. § 2946. CSA: C. 137, § 36. CRS 53: § 115-5-3. C.R.S. 1963: § 115-5-3. L. 69: p. 937, § 29. L. 81: (1) amended, p. 1918, § 1, effective June 19. L. 82: (1) amended, p. 629, § 43, effective April 2.

ANNOTATION

General assembly has granted extensive and broad regulatory powers to commission including the power to designate location of facilities and also relocation or removal thereof. *Pub. Serv. Co. v. Pub. Utils. Comm'n*, 142 Colo. 135, 350 P.2d 543, cert. denied, 364 U.S. 820, 81 S. Ct. 53, 5 L. Ed.2d 50 (1960).

Commission determines certification of new area absent preexisting right to serve area. When there is no preexisting right to serve an area, even if there is presently service to a contiguous area, the new area can be certificated to whomever the public utilities commission, exercising its expertise, determines is best able

to serve the territory. *Rocky Mt. Natural Gas Co. v. Pub. Utils. Comm'n*, 199 Colo. 352, 617 P.2d 1175 (1980).

Findings on right to certificate binding on review. Findings of the public utilities commission on the right of a company to a certificate of public necessity and convenience under the provisions of this section are binding upon the court of review. *Pirie v. Pub. Utils. Comm'n*, 72 Colo. 65, 209 P. 640 (1922).

"Required consent" of proper county manifestly means "required by law". *Atchison, T. & S. F. Ry. v. Pub. Utils. Comm'n*, 77 Colo. 42, 234 P. 175 (1925).

40-5-104. Acquisition by municipality. (1) Any municipality which has acquired or constructed any public utility plant, property, or facility has the power to contract with a public utility for the operation of any part or the whole thereof, subject to the provisions of

articles 1 to 7 of this title and to exercise, in respect to such public utility, the powers of regulation and supervision conferred upon it by the commission.

(2) Sections 40-5-101 to 40-5-104 shall not apply to railroads.

Source: L. 17: p. 417, § 1. C.L. § 2946. CSA: C. 137, § 36. CRS 53: § 115-5-4. C.R.S. 1963: § 115-5-4. L. 69: p. 938, § 30.

ANNOTATION

Commission determines certification of new area absent preexisting right to serve area. When there is no preexisting right to serve an area, even if there is presently service to a contiguous area, the new area can be certificated

to whomever the public utilities commission, exercising its expertise, determines is best able to serve the territory. *Rocky Mt. Natural Gas Co. v. Pub. Utils. Comm'n*, 199 Colo. 352, 617 P.2d 1175 (1980).

40-5-105. Certificate or assets may be sold, assigned, or leased. (1) The assets of any public utility, including any certificate of public convenience and necessity or rights obtained under any such certificate held, owned, or obtained by any public utility, may be sold, assigned, or leased as any other property, but only upon authorization by the commission and upon such terms and conditions as the commission may prescribe; except that this section does not apply to assets that are sold, assigned, or leased:

- (a) In the normal course of business; or
- (b) That are owned by a telecommunications service provider and:
 - (I) Are not used in the provision of regulated telecommunications services; or
 - (II) (A) Are land and support assets and are not directly used in the provision of regulated telecommunications services.

(B) A telecommunications service provider shall provide notice to the commission of transactions subject to this subparagraph (II), along with the associated accounting entries on the provider's books and records, to permit the commission to determine, if necessary, the disposition of any gain or loss from the transaction.

Source: L. 45: p. 526, § 2. CSA: C. 137, § 36. CRS 53: § 115-5-5. C.R.S. 1963: § 115-5-5. L. 69: p. 938, § 31. L. 71: p. 1100, § 1. L. 2004: Entire section amended, p. 164, § 1, effective March 17.

ANNOTATION

Law reviews. For article, "Generation and Transmission Loan Policy Under the Rural Electrification Act", see 43 Den. L.J. 269 (1966). For article, "Utility Use of Renewable Resources: Legal and Economic Implications", see 59 Den. L.J. 663 (1982).

Jurisdiction over transfer of assets. The commission has jurisdiction to review telephone company's transfer of directory publishing assets to related corporation. *Mountain States Tel. & Tel. v. P.U.C.*, 763 P.2d 1020 (Colo. 1988).

Action pursuant to this provision and article XXV of the state constitution requiring commission approval of transfer of utility's assets not made in the ordinary course of business does not constitute an unconstitutional taking. *Mountain States Tel. & Tel. v. P.U.C.*, 763 P.2d 1020 (Colo. 1988).

The public utilities commission's role in deleting affected territories is a ministerial function. It merely accepts the surrender of certificate rights and deletes the territories from

the certificates; it has no discretion to determine whether deleted portions are in the public interest. *City of Colo. Springs v. Mountain View Elec. Ass'n*, 925 P.2d 1378 (Colo. App. 1995).

Commission may not order sale or fix sale price. If negotiated sales of facilities are made at unreasonable prices, the public utilities commission may well choose to refuse its approval of the sale, but it may not order a sale or fix the sale price before the negotiations have even begun. *Pub. Utils. Comm'n v. Home Light & Power Co.*, 163 Colo. 72, 428 P.2d 928 (1967).

Change in record ownership not sufficient basis to order service discontinuance. The change of ownership may also entail a change in the nature of the service rendered, but change in the record ownership, without more, is not a sufficient basis on which to order discontinuance of service. *Pub. Utils. Comm'n v. Home Light & Power Co.*, 163 Colo. 72, 428 P.2d 928 (1967).

Special expertise of commission in regulating utilities is given great deference in its

selection of an appropriate remedy for telephone company's transfer of directory publishing assets. Mountain States Tel. & Tel. v. P.U.C., 763 P.2d 1020 (Colo. 1988).

Remedy of undoing transfer made without prior approval of PUC was appropriate. Moun-

tain States Tel. & Tel. v. P.U.C., 763 P.2d 1020 (Colo. 1988).

Articles 3 and 4 of this title provide sufficient general standards for guidance relative to application of this section. Mountain States Tel. & Tel. v. P.U.C., 763 P.2d 1020 (Colo. 1988).

40-5-106. Designation for service of process. (1) It is the duty of every public utility operating in, through, or into the state of Colorado to file with the commission a designation in writing, under oath, of the name and post office address of a person upon whom service of notices or orders in proceedings pending before the commission may be made. Such designation may from time to time be changed by like writing similarly filed. In default of such designation, service of any notice or order may be made by posting such order or notice in the office of the director of the commission and by mailing a copy of such notice or order to such public utility by certified mail, return receipt requested, at its last-known address.

(2) Every public utility operating in, through, or into the state of Colorado shall also file with the director of the commission a designation in writing, under oath, of the name and post office address of a person in the state of Colorado upon whom process issued by or under the authority of any court or board having jurisdiction of the subject matter may be served in any judicial or other proceeding brought against such public utility in this state. Such designation may from time to time be changed by like writing similarly filed. In default of such designation, service may be made upon any agent, representative, or employee of such public utility found within the state. Nothing in this article shall apply to railroad corporations.

Source: L. 45: p. 526, § 3. **CSA: C. 137,** § 36. **CRS 53:** § 115-5-6. **C.R.S. 1963:** § 115-5-6. **L. 69:** p. 938, § 32. **L. 2003:** Entire section amended, p. 1704, § 17, effective May 14.

ARTICLE 6

Hearings and Investigations

40-6-101.	Proceedings - delegation of duties - rules.	40-6-111.	Hearing on schedules - suspension - new rates - rejection of tariffs.
40-6-102.	Service - fees - depositions - examination of witnesses.	40-6-112.	Alteration or amendment of decision - decisions final in collateral actions.
40-6-103.	Administration of oaths - compulsion of testimony - fees.	40-6-113.	Transcripts - record on review.
40-6-104.	Certified copies - evidence - orders.	40-6-114.	Reconsideration, reargument, or rehearing - application - basis of review - order - exception.
40-6-105.	Fees - copies of records - disposition.	40-6-115.	Review by district court - mandamus.
40-6-106.	Power to inspect books and accounts.	40-6-116.	Suspension of decision - notice - bond - accounting pending review.
40-6-107.	Production of documents - transparency in planning for future acquisitions - rules.	40-6-117.	Priority on court calendar.
40-6-108.	Complaints - service - notice of hearing.	40-6-118.	Valuations - hearings - findings - review.
40-6-109.	Hearings - orders - record - review - representation of entities in nonadjudicatory proceedings.	40-6-119.	Excess charges - reparation - actions - limitation.
40-6-109.5.	Hearings on applications - time limits for decisions.	40-6-120.	Temporary authority. (Repealed)
40-6-110.	Complaint by utility.	40-6-121.	Computation of time.

40-6-122.	Ex parte communications - disclosure.	40-6-123. 40-6-124.	Standards of conduct. Disqualification.
-----------	---------------------------------------	------------------------	--

40-6-101. Proceedings - delegation of duties - rules. (1) The commission shall conduct its proceedings in such manner as will best conduce the proper dispatch of business and the ends of justice. All of the provisions of article 4 of title 24, C.R.S., shall apply to the work, business, proceedings, and functions of the commission, or any individual commissioner or administrative law judge; but where there is a specific statutory provision in this title applying to the commission, such specific statutory provision shall control as to the commission. For this purpose, any administrative law judge, as provided in this title, shall be deemed to be a hearing commissioner as that term is used in said article 4 of title 24, C.R.S. The commission may from time to time make or amend such general rules or orders as may be requisite for the order and regulation of proceedings before it, or before any individual commissioner or administrative law judge, including forms of notices and the service thereof. Any party to the proceeding may appear before the commission or any individual commissioner or administrative law judge and be heard. Every vote and official act of the commission, any individual commissioner, or an administrative law judge shall be entered of record and such record shall be made public upon the request of any party interested. All hearings before the commission, any individual commissioner, or an administrative law judge shall be public.

(2) (a) Except as otherwise provided in paragraph (b) of this subsection (2), the commission may by order direct that any of its work, business, or functions under any provision of law, except functions vested solely in the commission under this title, be assigned or referred to an individual commissioner or to an administrative law judge to be designated by order for action thereon, and the commission may by order at any time amend, modify, supplement, or rescind any such assignment or reference. When an individual commissioner or an administrative law judge is unable to act upon any matter so assigned or referred because of absence or other cause, the chairman of the commission may designate another commissioner or administrative law judge, as the case may be, to serve temporarily until the commission otherwise orders.

(b) Every case submitted to the commission for adjudication shall in the first instance be heard by an administrative law judge unless the commission, by minute order, assigns the case to the commission or to an individual commissioner for hearing.

(3) An individual commissioner or an administrative law judge has authority to hear and determine, order, certify, report, or otherwise act as to any work, business, or functions assigned or referred to such officer under the provisions of this title and, with respect thereto, has all the jurisdiction and powers conferred by law upon the commission and is subject to the same duties and obligations. The seal of the commission shall be the seal of an individual commissioner or administrative law judge. Except as otherwise provided in this title, any order, decision, or requirement of an individual commissioner or an administrative law judge with respect to any matter assigned or referred to such officer under subsection (2) of this section has the same force and effect and may be made and evidenced in the same manner as if made or taken by the commission.

(4) All hearings and investigations before the commission, any individual commissioner, or any administrative law judge shall be governed by this title and by rules of practice and procedure adopted by the commission; and, in the conduct thereof, neither the commission, nor any individual commissioner, nor any administrative law judge shall be bound by the technical rules of evidence. No informality in any proceeding or in the manner of taking testimony before the commission, any commissioner, or any administrative law judge shall invalidate any order, decision, rule, or regulation made, approved, or confirmed by the commission.

Source: L. 13: p. 489, § 38. C.L. § 2947. CSA: C. 137, § 38. L. 45: p. 527, § 4. CRS 53: § 115-6-1. C.R.S. 1963: § 115-6-1. L. 69: p. 939, § 33. L. 89: Entire section amended, p. 1526, § 9, effective April 12. L. 93: (2) amended, p. 2063, § 16, effective July 1. L. 2003: (3) amended, p. 1705, § 18, effective May 14.

Cross references: For conduct which may constitute the practice of law, see article 5 of title 12.

ANNOTATION

Law reviews. For article, "Trying to Get the P.U.C. to Let You Run a Truck", see 7 Dicta 4 (1930). For note, "The Right to Cross-Examine Adverse Witnesses as a Part of Due Process in Hearings Before Colorado Agencies", see 31 Dicta 383 (1954). For comment on the Colorado Administrative Procedure Act and its construction, see 51 Den. L. J. 275 (1974).

Broad powers under color of state law. The Colorado general assembly has bestowed broad powers upon the public utilities commission. Public utilities, even though privately financed and owned, operating pursuant to the regulation of the commission, are granted existence by virtue of state law, and thereafter carry on business under color of state law. *Denver Welfare Rights Org. v. Pub. Utils. Comm'n*, 190 Colo. 329, 547 P.2d 239 (1976).

Presumption of regularity of commissioner's action. There is express authority throughout the statute governing procedures before the public utilities commission for hearings to be conducted before the full commission, or before any one commissioner or any examiner of the commission. The presumption of reading and considering is merely one facet of the general presumption of regularity, which supports the official acts of public officers and, in the absence of clear evidence to the contrary, courts presume that they have properly discharged their official

duties. *Pub. Utils. Comm'n v. District Court*, 163 Colo. 462, 431 P.2d 773 (1967).

The assignment of separate numbers by the public utilities commission to its decisions dealing with different phases of the same proceeding does not create two separate proceedings. *Pub. Utils. Comm'n v. Poudre Valley Rural Elec. Ass'n*, 173 Colo. 364, 480 P.2d 106 (1970).

Laymen may represent others in hearings before utilities commission. *Denver Bar Ass'n v. Pub. Utils. Comm'n*, 154 Colo. 273, 391 P.2d 467 (1964).

Where provisions of public utilities law and state administrative procedure act conflict, the former governs. *Home Builders Ass'n v. Pub. Utils. Comm'n*, 720 P.2d 552 (Colo. 1986).

Although the decision of the PUC appeared as a classification of a single utility's services, it in effect established the standards and policies applicable to telecommunications services of all public utilities. The proceeding which resulted in the ruling was therefore a rule-making proceeding, subject to the APA requirements for rule-making proceedings. *Colo. Office of Consumer Counsel v. Mountain States Telephone and Telegraph, Co.*, 816 P.2d 278 (Colo. 1991).

Applied in Mountain States Tel. & Tel. Co. v. Pub. Utils. Comm'n, 195 Colo. 130, 576 P.2d 544 (1978).

40-6-102. Service - fees - depositions - examination of witnesses. (1) The commission, each commissioner, an administrative law judge with respect to matters referred to such judge, and the director of the commission have power to issue notices, orders to satisfy or answer, summonses, subpoenas, and commissions to take the deposition of any witness whose testimony is required in any proceeding pending before the commission in like manner and to the same extent as courts of record. The process issued by the commission, any commissioner, an administrative law judge, or the director of the commission shall extend to all parts of the state and beyond the boundaries thereof as may be provided by law or the Colorado rules of civil procedure and may be served by any person authorized to serve process of courts of record, by any person designated for that purpose by the commission or a commissioner, or by first-class mail, postage prepaid, as provided in section 40-6-108. The person executing any such process shall receive such compensation as may be allowed by the commission, not to exceed the fees now prescribed by law for similar services, and such fees shall be paid in the same manner as provided for payment of the fees of witnesses.

(2) In any investigation, inquiry, hearing, or other proceeding pending before the commission, any commissioner, or any administrative law judge of the commission, the depositions of witnesses may be taken, both within and without the state of Colorado, under the same circumstances and in the same manner as provided by the Colorado rules of civil procedure for the taking of depositions in courts of record.

(3) A party to the record of any investigation, inquiry, hearing, or other proceeding pending before the commission, any commissioner, any administrative law judge of the commission, or a person for whose immediate benefit such investigation, hearing, or other proceeding is prosecuted or defended, or the directors, officers, superintendent, or managing agent of any corporation which is a party to the record in such investigation, hearing, or

other proceeding may be examined upon the hearing thereof, or upon deposition, or both, as if under cross-examination at the instance of the commission or any adverse party, and for that purpose may be compelled, in the same manner and subject to the same rules for examination as any other witness, to testify; but the party calling for such examination shall not be concluded thereby but may rebut it by counter testimony.

Source: L. 13: p. 489, § 39. C.L. § 2948. CSA: C. 137, § 39. L. 45: p. 527, § 5. CRS 53: § 115-6-2. C.R.S. 1963: § 115-6-2. L. 69: p. 940, § 34. L. 89: Entire section amended, p. 1527, § 10, effective April 12. L. 2003: (1) amended, p. 1705, § 19, effective May 14.

Cross references: For depositions and discovery, see Rules 26 to 37, Colorado rules of civil procedure; for service of process, see Rule 4(d), Colorado rules of civil procedure; for fees of sheriff for service of process, see § 30-1-104; for payment of fees of witnesses, see § 40-6-103.

ANNOTATION

Commission's discovery procedures based on rules of civil procedure. The public utilities commission has itself adopted procedures for conducting discovery which are based on the Colorado rules of civil procedure. *Peoples Natural Gas Div. v. Pub. Utils. Comm'n*, 626 P.2d 159 (Colo. 1981).

Availability of discovery in post-hearing, preappeal proceeding limited. In a post-hearing, preappeal administrative proceeding, discovery should be available as a matter of right only if the party alleging procedural irregulari-

ties first shows, by affidavit or other substantial factual evidence, that there is good cause to believe that ex parte communications, personal bias, or other impermissible considerations played a part in the tribunal's decision. *Peoples Natural Gas Div. v. Pub. Utils. Comm'n*, 626 P.2d 159 (Colo. 1981).

Ex parte exchanges between advocate and adjudicatory tribunal may not arbitrarily be screened from appellate scrutiny. *Peoples Natural Gas Div. v. Pub. Utils. Comm'n*, 626 P.2d 159 (Colo. 1981).

40-6-103. Administration of oaths - compulsion of testimony - fees. (1) The commission, each commissioner, the director, and any administrative law judge as to matters referred to such judge have power to administer oaths, certify to all official acts, and issue subpoenas for the attendance of witnesses and the production of records, documents, and testimony in any inquiry, investigation, hearing, or proceeding in any part of the state. No subpoena shall be issued except upon good cause shown. Good cause shown shall consist of an affidavit stating with specificity the testimony, records, or documents sought and the relevance of such testimony, records, or documents to the proceedings of the commission. Each witness who appears by order of the commission, a commissioner, the director, or any administrative law judge shall receive for the witness' attendance the same fees and mileage allowed by law to a witness in civil cases, which amount shall be paid by the party at whose request such witness is subpoenaed. When any witness who has not been required to attend at the request of any party is subpoenaed, the witness' fees and mileage shall be paid from the funds appropriated for the use of the commission in the same manner as other expenses of the commission are paid. Any witness subpoenaed except one whose fees and mileage may be paid from the funds of the commission, at the time of service, may demand the fees to which the witness is entitled for travel to and from the place at which the witness is required to appear, and one day's attendance. If such witness demands such fees at the time of service, and they are not at that time paid or tendered, the witness shall not be required to attend, as directed in the subpoena. All fees and mileage to which any witness is entitled under the provisions of this section may be collected by action therefor instituted by the person to whom such fees are payable. No witness furnished with free transportation shall receive mileage for the distance the witness may have traveled on such free transportation.

(2) The district court in and for the county or city and county in which any inquiry, investigation, hearing, or proceeding may be held by the commission, or any individual commissioner or administrative law judge, has the power to compel the attendance of witnesses, the giving of testimony, and the production of records or documents as required

by any subpoenas issued by the commission, or any individual commissioner, the director, or any administrative law judge. The commission, individual commissioner, or an administrative law judge before whom the testimony is to be given or produced, in case of the failure or refusal of any witness to attend or testify or produce any records or documents required by such subpoena, may report to the district court in and for the county or city and county in which the proceeding is pending, by petition, setting forth that due notice has been given of the time and place of attendance of said witness or the production of said records or documents, that the witness has been subpoenaed in the manner prescribed in this title, and that the witness has failed or refused to attend or produce the records or documents required by the subpoena or has failed or refused to answer questions propounded to the witness in the course of such proceeding; and the commission, individual commissioner, or an administrative law judge may ask for an order of the court compelling the witness to attend and testify or produce or cause to be produced documentary evidence. No person so testifying shall be exempt from prosecution or punishment for any perjury in the first degree committed by such person in this testimony. Nothing in this section shall be construed as in any manner giving to any public utility immunity of any kind.

Source: L. 13: p. 489, § 40. C.L. § 2949. CSA: C. 137, § 40. CRS 53: § 115-6-3. C.R.S. 1963: § 115-6-3. L. 69: p. 940, § 35. L. 72: p. 566, § 40. L. 83: (1) amended, p. 1561, § 1, effective June 1. L. 89: Entire section amended, p. 1528, § 11, effective April 12. L. 2003: Entire section amended, p. 1706, § 20, effective May 14.

Cross references: For perjury, see part 5 of article 8 of title 18; for fees of witnesses, see §§ 13-33-102 and 13-33-103.

40-6-104. Certified copies - evidence - orders. (1) Copies of all official documents, commission decisions, and orders on file with the commission, or documents filed or deposited according to law in the office of the commission, certified by a commissioner or by the director under the official seal of the commission to be true copies of the originals, shall be evidence in like manner as the originals and shall be treated and recognized as such by all courts of the state of Colorado.

(2) Any order, decision, authorization, certificate, or entry, or a copy thereof, certified by a commissioner or by the director under the official seal of the commission to be a true copy of the original order, decision, authorization, certificate, or entry, may be filed for record in the office of the county clerk and recorder of any county or city and county in which is located the principal place of business of any public utility affected thereby or in which is situated any property of any such public utility, and such record shall impart notice of its provisions to all persons. A certificate under the seal of the commission that any such order, decision, authorization, or certificate has not been modified, stayed, suspended, or revoked may also be recorded in the same offices in the same manner and with like effect.

Source: L. 13: p. 491, § 41. C.L. § 2950. CSA: C. 137, § 41. CRS 53: § 115-6-4. C.R.S. 1963: § 115-6-4. L. 69: p. 941, § 36. L. 2003: Entire section amended, p. 1707, § 21, effective May 14.

40-6-105. Fees - copies of records - disposition. (1) The commission shall charge the following fees: For copies of papers and records not required to be certified or otherwise authenticated by the commission, twenty cents for each page; for certified copies of official documents and orders filed in its office, twenty cents for each page; and one dollar for every certificate under seal affixed thereto.

(2) No fees shall be charged for copies of papers, records, or official documents furnished to public officers for use in their official capacity, but the commission may fix reasonable charges for publications issued under its authority. All fees charged under this section shall be collected by the commission, paid to the department of revenue, deposited in the office of the state treasurer, and credited to the public utilities commission fixed utility fund or the public utilities commission motor carrier fund, as the case may be.

Source: L. 13: p. 491, § 42. C.L. § 2951. CSA: C. 137, § 42. CRS 53: § 115-6-5. C.R.S. 1963: § 115-6-5. L. 69: p. 942, § 37.

40-6-106. Power to inspect books and accounts. The commission, each commissioner, and any person employed by the commission shall have the right to inspect the records and documents of any public utility; and the commission, each commissioner, or any employee authorized to administer oaths has the power to examine under oath any officer, agent, or employee of such public utility in relation to the business and affairs of said public utility. Any person other than a commissioner demanding such inspection shall produce under the hand and seal of the commission his authority to make such inspection; and a written record of the testimony or statement so given under oath shall be made and filed with the commission.

Source: L. 13: p. 492, § 43. C.L. § 2952. CSA: C. 137, § 43. CRS 53: § 115-6-6. C.R.S. 1963: § 115-6-6. L. 69: p. 942, § 38.

ANNOTATION

Law reviews. For article, "Discovery of Information Obtained by Agency Staff Pursuant to Statutory Audit Powers", see 24 Colo. Law. 279 (1995).

40-6-107. Production of documents - transparency in planning for future acquisitions - rules. (1) The commission may require, by order served on any public utility in the manner provided in section 40-6-102 for the service of orders, the production within this state at such time and place as it may designate of any records and documents kept by the public utility in any office or place outside of this state, or, at its option, verified copies in lieu thereof, so that an examination of the records or documents may be made by the commission or under its direction.

(2) (a) To ensure transparency in the acquisition of power generation resources for the benefit of Colorado ratepayers and to promote fairness in electric utility competitive bidding processes, the commission shall, within ninety days after March 29, 2011, commence a rule-making proceeding to adopt rules, applicable after March 29, 2011, to require an investor-owned electric utility that is evaluating or has evaluated an existing or proposed electric generating facility as a potential resource, whether in connection with a commission proceeding or otherwise, to provide the owner or developer of the generating facility, upon request, with reasonable and timely access to the modeling inputs and assumptions that were used by the investor-owned public utility to evaluate the facility and that reasonably relate to that facility or to the transmission of electricity from that facility to the investor-owned public utility. Bidders in a competitive electric resource bidding process shall be permitted access to those modeling inputs and assumptions, as the modeling inputs and assumptions apply to the bidders' particular facility, in time to ensure that errors or omissions may be corrected before the competitive bidding process is completed. If it is determined that an error or omission, as defined by commission rule-making, exists in the investor-owned public utility's modeling, the commission shall require the investor-owned public utility to perform additional modeling to confirm that electric generating facilities are fairly and accurately represented in the results of any computer modeling performed by the investor-owned public utility.

(b) In any commission proceeding regarding electric resource planning or otherwise relating to the acquisition of, contracting for, or retirement of electric generation facilities, the commission shall establish procedures regarding the designation and approval of information as highly confidential that protect the public interest and assure that ratepayers receive the benefits of competition and transparency while protecting the trade secrets of computer modeling software producers, independent bidders, and the investor-owned public utility.

Source: L. 13: p. 493, § 44. C.L. § 2953. CSA: C. 137, § 44. CRS 53: § 115-6-7. C.R.S. 1963: § 115-6-7. L. 69: p. 943, § 39. L. 2011: Entire section amended, (HB 11-1262), ch. 75, p. 206, § 1, effective March 29.

Cross references: For service of orders, see Rule 4(d), Colorado rules of civil procedure.

ANNOTATION

Public utilities commission has power to order production of business records of corporation which held permit authorizing it to	engage in business as towing carrier. Pub. Utils. Comm'n v. District Court, 180 Colo. 388, 505 P.2d 1300 (1973).
---	--

40-6-108. Complaints - service - notice of hearing. (1) (a) Complaint may be made by the commission on its own motion or by any corporation, person, chamber of commerce, or board of trade, or by any civic, commercial, mercantile, traffic, agricultural, or manufacturing association or organization, or by any body politic or municipal corporation by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any public utility, including any rule, regulation, or charge heretofore established or fixed by or for any public utility, in violation, or claimed to be in violation, of any provision of law or of any order or rule of the commission.

(b) No complaint shall be entertained by the commission, except upon its own motion, as to the reasonableness of any rates or charges of any gas, electric, water, or telephone public utility, unless the same is signed by the mayor or the president or chairman of the board of trustees or a majority of the council, commission, or other legislative body of the county, city and county, city, or town, if any, within which the alleged violation occurred, or not less than twenty-five customers or prospective customers of such public utility.

(c) All matters upon which complaint may be founded may be joined in one hearing, and no motion shall be entertained against a complaint for misjoinder of causes of action or grievances or misjoinder or nonjoinder of parties. In any review by the courts of orders or decisions of the commission, the same rule shall apply with regard to the joinder of causes and parties.

(d) The commission is not required to dismiss any complaint because of the absence of direct damage to the complainant.

(e) Upon the filing of any complaint, the commission shall cause a copy thereof to be served upon the person complained of, together with an order requiring such defendant to satisfy or answer said complaint within a time to be fixed by the commission.

(2) (a) Notice of all applications, petitions, and orders instituting investigations or inquiries shall be given to all persons, firms, or corporations who, in the opinion of the commission, are interested in, or who would be affected by, the granting or denial of any such application, petition, or other proceeding. Except for good cause shown, any person desiring to file an objection or intervene in or participate as a party in any such proceeding shall file his or her objection or petition for leave to intervene or, under such rules as the commission may prescribe, file other appropriate pleadings to become a party, within thirty days after the date of the notice, or such lesser time as the commission may prescribe. No final action shall be taken by the commission in any proceeding during the time any such filing is permitted.

(b) Any public utility giving notice of a proposed gas or electric tariff shall serve such notice upon the Colorado energy office or its successor agency. The office shall be granted leave to intervene as a matter of right, upon a timely filing of a petition or other pleading in accordance with this section, in adjudicatory matters affecting gas or electric utilities; except that the office shall not be a party to any individual complaint between a utility and an individual.

(3) Service in all applications, petitions, complaints, hearings, investigations, and other proceedings pending before the commission may be made upon any person upon whom a summons may be served in accordance with the provisions of the Colorado rules of civil procedure, or may be made personally or by first-class mail. In all cases wherein service is obtained by mail by the commission, the certificate of the director of the commission of

such mailing shall be prima facie evidence that service has been obtained, and the time fixed in any order or notice shall commence to run from the date of mailing as shown in such certificate. The mailing of any notice or other paper by any other party to a proceeding shall be evidenced by the certificate of the person mailing such notice or other paper, and the time fixed in any such notice or other paper shall commence to run from the date of mailing as shown in such certificate.

(4) The commission shall fix the time when and place where any hearing required by this title or by article 4 of title 24, C.R.S., will be had upon any application, complaint, petition, investigation, or other proceeding, and shall serve notice thereof to the parties not less than ten days before the time set for such hearing, unless the commission finds that public interest or necessity requires that any such hearing be held at an earlier date. The commission shall hold a hearing and issue a final order in complaint cases within two hundred ten days after the filing of testimony and exhibits by the complainant. In extraordinary circumstances, the commission may extend the time an additional ninety days following a hearing in which such extraordinary circumstances are established. The complainant may waive the time limits established in this section, in which case the time limits are not binding on the commission.

Source: L. 13: p. 493, § 45. C.L. § 2954. CSA: C. 137, § 45. L. 45: p. 528, § 6. CRS 53: § 115-6-8. C.R.S. 1963: § 115-6-8. L. 69: p. 943, § 40. L. 89: (2) and (4) amended, p. 1529, § 12, effective April 12. L. 93: (4) amended, p. 2064, § 17, effective July 1. L. 2003: (3) amended, p. 1707, § 22, effective May 14. L. 2008: (2) amended, p. 1796, § 14, effective July 1. L. 2012: (2)(b) amended, (HB 12-1315), ch. 224, p. 981, § 50, effective July 1.

Cross references: For service of summons, see Rule 4(e), Colorado rules of civil procedure.

ANNOTATION

This section authorizes a complaint to be made by the commission on its own motion and it may institute investigations or inquiries concerning violations of any of its rules or orders. *Eveready Freight Serv., Inc. v. Pub. Utils. Comm'n*, 131 Colo. 172, 280 P.2d 442 (1955); *Peoples Natural Gas Div. v. Pub. Utils. Comm'n*, 698 P.2d 255 (Colo. 1985).

Jurisdiction over motor carriers is expressly conferred on the commission by §§ 40-10-102, 40-10-103, 40-10-104, 40-10-105, and this section. *Eveready Freight Serv., Inc. v. Pub. Utils. Comm'n*, 131 Colo. 172, 280 P.2d 442 (1955).

Administrative proceeding not to be equated with equity action. An administrative proceeding before the public utilities commission, a quasi-judicial, regulatory agency, is not to be equated with an historical equity action. *Ephraim Freightways, Inc. v. Red Ball Motor Freight, Inc.*, 376 F.2d 40 (10th Cir.), cert. denied, 389 U.S. 829, 88 S. Ct. 92, 19 L. Ed.2d 87 (1967).

Opportunity to be heard means opportunity to prove allegations. When one relies on

this section and § 40-6-109, which provide opportunity to be heard, one is justified in believing that means opportunity to prove the allegations of the complaint or protest. *Consolidated Freightways Corps. v. Pub. Utils. Comm'n*, 158 Colo. 239, 406 P.2d 83 (1965).

Challenger has burden of proof. An organization, such as the Colorado municipal league, may file a complaint and establish that any new or existing rate does not comply with the statutory mandate. Under this procedure, the challenger has the burden of proof. *Pub. Utils. Comm'n v. District Court*, 186 Colo. 278, 527 P.2d 233 (1974).

When the public utilities commission decides to suspend the rates and hold hearings, the burden is on the public utility to establish that the proposed rates comply with law, and, unless a challenger exhausts this administrative remedy, it has no basis for district court review. *Pub. Utils. Comm'n v. District Court*, 186 Colo. 278, 527 P.2d 233 (1974).

Applied in *Cottrell v. City & County of Denver*, 636 P.2d 703 (Colo. 1981).

40-6-109. Hearings - orders - record - review - representation of entities in nonadjudicatory proceedings. (1) At the time fixed for any hearing before the commission, any commissioner, or an administrative law judge, or, at the time to which the same may have been continued, the applicant, petitioner, complainant, the person, firm, or

corporation complained of, and such persons, firms, or corporations as the commission may allow to intervene and such persons, firms, or corporations as will be interested in or affected by any order that may be made by the commission in such proceeding and who shall have become parties to the proceeding shall be entitled to be heard, examine and cross-examine witnesses, and introduce evidence. A full and complete record of all proceedings had before the commission, any commissioner, or an administrative law judge in any formal hearing and all testimony shall be taken down by any reporter appointed by the commission or, as deemed appropriate by the commission, a commissioner, or an administrative law judge, as applicable, recorded electronically. All parties in interest shall be entitled to be heard in person or by attorney.

(2) Whenever any hearing, investigation, or other proceeding is assigned to an administrative law judge or individual commissioner for hearing, the administrative law judge or individual commissioner, after the conclusion of said hearing, shall promptly transmit to the commission the record and exhibits of said proceeding together with a written recommended decision which shall contain his findings of fact and conclusions thereon, together with the recommended order or requirement. Copies thereof shall be served upon the parties, who may file exceptions thereto; but if no exceptions are filed within twenty days after service upon the parties, or within such extended period of time as the commission may authorize in writing (copies of any such extension to be served upon the parties), or unless such decision is stayed within such time by the commission upon its own motion, such recommended decision shall become the decision of the commission and subject to the provisions of section 40-6-115. The commission upon its own motion may and where exceptions are filed shall reconsider the matter, either upon the same record or after further hearing, and such recommended decision shall thereupon be stayed or postponed pending final determination thereof by the commission. The commission may adopt, reject, or modify the findings of fact and conclusions of such individual commissioner or administrative law judge or, after examination of the record of any such proceeding, enter its decision and order therein without regard to the findings of fact and conclusions of any individual commissioner or administrative law judge. Any commissioner to whom a proceeding may be so assigned shall not be disabled thereby from participating with the commission in the final decision.

(3) After the conclusion of any hearing, investigation, or proceeding before the commission, the commission shall make and file its decision. The decision shall be a report in writing in which the commission shall state its findings of fact and conclusions thereon together with its order or requirement. The decision, under the seal of the commission, shall be served upon all parties and made available to all participants in the proceeding.

(4) Unless otherwise provided in this title, all decisions of the commission shall become effective upon a day to be fixed by the commission in any such decision and shall continue in force either for a period which may be designated therein or until changed or abrogated by the commission. Decisions containing negative orders shall be effective on the date of entry thereof, unless otherwise provided in any such decision. If an order or requirement cannot, in the judgment of the commission, be complied with within the time prescribed therein, the commission, on application made within such time and for good cause shown, may extend the time for compliance fixed in its decision.

(5) The commission may by general rule or regulation provide for the taking of evidence in uncontested or unopposed proceedings by affidavit or otherwise, without the necessity of a formal oral hearing. Such shortened or informal proceedings shall otherwise be subject to all of the provisions of this title. Upon its own motion the commission may and upon request of a party timely made the commission shall assign any such uncontested or unopposed proceeding for hearing.

(6) The commission may make the initial decision in cases where it has not presided at the taking of evidence, and the recommended decision of the individual commissioner or administrative law judge may be omitted in any case in which the commission finds upon the record that due and timely execution of its functions imperatively and unavoidably so requires.

(7) The commission may by general rule or regulation provide for appearances pro se by, or for representation by authorized officers or regular employees of, the commission's

staff, corporations, partnerships, limited liability companies, sole proprietorships, and other legal entities in certain nonadjudicatory matters before the commission.

Source: L. 13: p. 494, § 46. C.L. § 2955. CSA: C. 137, § 46. L. 45: p. 529, § 7. CRS 53: § 115-6-9. C.R.S. 1963: § 115-6-9. L. 69: p. 944, § 41. L. 89: (1), (2), and (4) to (6) amended, p. 1530, § 13, effective April 12. L. 93: (7) added, p. 2064, § 18, effective July 1. L. 2008: (3) amended, p. 1796, § 15, effective July 1. L. 2009: (1) amended, (HB 09-1118), ch. 130, p. 563, § 12, effective August 5.

ANNOTATION

Law reviews. For note, "Right of Cross-Examination Before Administrative Agencies in Colorado", see 29 Dicta 446 (1952). For note, "The Right to Cross-Examine Adverse Witnesses as a Part of Due Process in Hearings Before Colorado Agencies", see 31 Dicta 383 (1954).

Only the commission has authority to interpret existing carrier permits to determine the territory included thereunder, which determination, if deemed erroneous, may be reviewed by the courts. *Lane v. Pub. Utils. Comm'n*, 152 Colo. 335, 381 P.2d 818 (1963).

A carrier desiring an interpretation of its authority may seek a hearing before the commission. *Lane v. Pub. Utils. Comm'n*, 152 Colo. 335, 381 P.2d 818 (1963).

Carrier may apply to the courts for review. If a carrier considers the public utilities commission's interpretation of its authority under its certificate to be erroneous, it may apply to the courts to review the ruling. *Lane v. Pub. Utils. Comm'n*, 152 Colo. 335, 381 P.2d 818 (1963).

Courts are limited to affirming or reversing. In a proceeding to review a decision of the public utilities commission, the courts are limited to affirming or reversing such decision and have no authority to make new findings. *Pub. Utils. Comm'n v. Colo. Interstate Gas Co.*, 142 Colo. 361, 351 P.2d 241 (1960).

Review of public utilities commission decisions by the courts is restricted to review on a record as made before the public utilities commission and is further limited by section 40-6-115. *Colo. Transp. Co. v. Pub. Utils. Comm'n*, 141 Colo. 203, 347 P.2d 505 (1959).

In providing for "hearings", the general assembly contemplated proceedings, judicial in character, with participation by all parties who might be interested in or affected by any order that may be made by the public utilities commission. *Pub. Utils. Comm'n v. Northwest Water Corp.*, 168 Colo. 154, 451 P.2d 266 (1969).

This section gives the right to a full hearing, and confers the privilege of introducing testimony, and at the same time imposes the duty of deciding in accordance with the facts proved. A finding without evidence is arbitrary and baseless. *Consolidated Freightways Corp. v.*

Pub. Utils. Comm'n, 158 Colo. 239, 406 P.2d 83 (1965).

A decision which is not grounded on evidence fails to apply the standard of "full hearing" set by congress as a guide to the commission in the performance of its quasi-judicial duties. *Consolidated Freightways Corp. v. Pub. Utils. Comm'n*, 158 Colo. 239, 406 P.2d 83 (1965).

Abbreviated hearing procedure permitted. Where the commission believes that an economic emergency may exist, and it may permit new rates to become effective without a hearing, participatory values are better served by allowing the commission to conduct a hearing with abbreviated procedures and a limitation on the issues to be considered. *Pub. Serv. Co. v. Pub. Utils. Comm'n*, 653 P.2d 1117 (Colo. 1982).

Findings must be made. This is a statutory mandate. *Wells Fargo Armored Serv. Corp. v. Pub. Utils. Comm'n*, 190 Colo. 204, 545 P.2d 707 (1976).

While findings of the P.U.C. which are supported by the evidence may not be set aside, findings of the commission not supported by evidence cannot be upheld on appeal. *J.C. Trucking v. P.U.C.*, 776 P.2d 366 (Colo. 1989).

The essential findings are that there is a need for this additional service and that economic feasibility will not be lost by the granting of the application. *Wells Fargo Armored Serv. Corp. v. Pub. Utils. Comm'n*, 190 Colo. 204, 545 P.2d 707 (1976).

This section contemplates two types of intervenors, (a) those which the commission may permit to intervene, and (b) those who will be interested in or affected by any order that the commission may make. *DeLue v. Pub. Utils. Comm'n*, 169 Colo. 159, 454 P.2d 939, cert. denied, 396 U.S. 956, 90 S. Ct. 428, 24 L.Ed.2d 421 (1969).

Two classes may participate: Those who may intervene as of right; and those whom the PUC permits to intervene. *RAM Broad. of Colo. v. Pub. Utils. Comm'n*, 702 P.2d 746 (Colo. 1985); *Pub. Serv. Co. of Colo. v. Trigen-Nations Energy Co.*, 982 P.2d 316 (Colo. 1999).

Potential competitors of applicant who were not currently serving applicant's customers were not entitled to intervene in pro-

ceeding under "by-pass" statute and thereby gain access to information, including prospective customers' names, contained in application. *Pub. Serv. Co. of Colo. v. Trigen-Nations Energy Co.*, 982 P.2d 316 (Colo. 1999).

Competitor limousine service's interest in its own certificate of public convenience and in providing the limousine service thereby authorized in such manner as to adequately serve the public convenience and necessity satisfies the requirements of this section. *Yellow Cab Coop. Ass'n v. Pub. Utils. Comm'n*, 869 P.2d 545 (Colo. 1994).

Whether PUC "regularly pursued its authority" pursuant to § 24-4-106 (7) depends on several factors, including whether the deci-

sion is based on evidence introduced at evidence-gathering stage of process, the PUC order is supported by findings of fact, the PUC supplied legislative standards guiding its decision-making function, and the PUC acted within authority conferred on it. *Home Builders Ass'n v. Pub. Utils. Comm'n*, 720 P.2d 552 (Colo. 1986).

Applied in *City of Loveland v. Pub. Utils. Comm'n*, 195 Colo. 298, 580 P.2d 381 (1978); *Caldwell v. Pub. Utils. Comm'n*, 200 Colo. 134, 613 P.2d 328 (1980); *Cottrell v. City & County of Denver*, 636 P.2d 703 (Colo. 1981); *Caldwell v. Pub. Utils. Comm'n*, 692 P.2d 1085 (Colo. 1984).

40-6-109.5. Hearings on applications - time limits for decisions. (1) Whenever an application of any kind is filed with the commission and is accompanied by the applicant's supporting testimony or a detailed summary thereof, together with exhibits, if any, the commission shall issue its decision on such application no later than one hundred twenty days after the application is deemed complete as prescribed by rules promulgated by the commission. If the commission finds that additional time is required, it may, by separate order, extend the time for decision by an additional period not to exceed ninety days.

(2) In the case of any application not accompanied by prefiled testimony and exhibits, the commission shall issue its decision no later than two hundred ten days after the application is deemed complete as prescribed by the commission's rules.

(3) The time limits specified in subsections (1) and (2) of this section may be waived by the applicant and, if so waived, shall not be binding on the commission.

(4) The commission, in particular cases, under extraordinary conditions and after notice and a hearing at which the existence of such conditions is established, may extend the time limits specified in subsections (1) and (2) of this section for a period not to exceed an additional ninety days.

Source: L. 93: Entire section added, p. 2064, § 19, effective July 1.

40-6-110. Complaint by utility. Any public utility has a right to complain on any grounds upon which complaints are allowed to be filed by other parties, and the same procedure shall be adopted and followed as in other cases.

Source: L. 13: p. 495, § 47. C.L. § 2956. CSA: C. 137, § 47. CRS 53: § 115-6-10. C.R.S. 1963: § 115-6-10. L. 69: p. 946, § 42.

40-6-111. Hearing on schedules - suspension - new rates - rejection of tariffs.

(1) (a) Whenever there is filed with the commission any tariff or schedule stating any new or changed individual or joint rate, fare, toll, rental, charge, classification, contract, practice, rule, or regulation, the commission has power, either upon complaint or upon its own initiative and without complaint, at once, and, if it so orders, without answer or other formal pleadings by the interested public utilities, but upon reasonable notice, to have a hearing concerning the propriety of such rate, fare, toll, rental, charge, classification, contract, practice, rule, or regulation if it believes that such a hearing is required and that such rate, fare, toll, rental, charge, classification, contract, practice, rule, or regulation may be improper.

(b) Pending the hearing and decision thereon, in the case of a public utility other than a rail carrier, such rate, fare, toll, rental, charge, classification, contract, practice, rule, or regulation shall not go into effect; but the period of suspension of such rate, fare, toll, rental, charge, classification, contract, practice, rule, or regulation shall not extend beyond one hundred twenty days beyond the time when such rate, fare, toll, rental, charge, classifica-

tion, contract, practice, rule, or regulation would otherwise go into effect unless the commission, in its discretion, and by separate order, extends the period of suspension for a further period not exceeding ninety days.

(c) Repealed.

(d) Notwithstanding any order of suspension of a proposed increase in electric, gas, or steam rates under this subsection (1), after January 1, 2012, the commission may order, without hearing, interim rates, at any level up to the proposed new rates, to take effect not later than sixty days after the filing for the proposed rate increase. In making a determination as to whether to allow interim rates, the commission shall consider the amount of the revenue deficiency presented by the utility and the extent to which this deficiency would adversely affect the utility during the time period required to hold hearings on the suspended rates.

(2) (a) (I) If a hearing is held thereon, whether completed before or after the expiration of the period of suspension, the commission shall establish the rates, fares, tolls, rentals, charges, classifications, contracts, practices, or rules proposed, in whole or in part, or others in lieu thereof, that it finds just and reasonable. In making such finding in the case of a public utility other than a rail carrier, the commission may consider current, future, or past test periods or any reasonable combination thereof and any other factors that may affect the sufficiency or insufficiency of such rates, fares, tolls, rentals, charges, or classifications during the period the same may be in effect and may consider any factors that influence an adequate supply of energy, encourage energy conservation, or encourage renewable energy development. The commission shall consider the reasonableness of the test period revenue requirements presented by the utility.

(II) If the rates established by the commission after hearing are lower than any interim rates established under paragraph (d) of subsection (1) of this section, then the commission shall order the utility to return to customers on their utility bills through a negative rate rider the difference between the total amount that would have been collected under the final approved rates and the amount collected under the interim rates for the period that the interim rates were in effect, with interest at a rate established by the commission.

(III) All such rates, fares, tolls, rentals, charges, classifications, contracts, practices, or rules not so suspended, on the effective date thereof, which, in the case of a public utility other than a rail carrier, shall not be less than thirty days after the time of filing the same with the commission, or of such lesser time as the commission may grant, shall go into effect and be the established and effective rates, fares, tolls, rentals, charges, classifications, contracts, practices, and rules subject to the power of the commission, after a hearing on its own motion or upon complaint, as provided in this article, to alter or modify the same.

(b) Repealed.

(c) If the commission considers factors which encourage renewable energy development, it shall also make findings and give due consideration to the effect of such factors on the utility's ability to recover its capital and operating costs.

(3) The tariffs and schedules required by this title shall contain such information, and shall be published, filed, and posted in such form and manner, as the commission by regulation shall prescribe; and the commission is authorized to reject any tariff or schedule filed with it which is not in the form required by this section and by such regulations. Any tariff or schedule so rejected by the commission shall be void and its use shall be unlawful.

(4) (a) The provisions of this section relating to suspension of rates, fares, tolls, rentals, charges, classifications, contracts, practices, rules, or regulations pending the hearing and decision thereon shall not apply to cooperative electric associations, but this subsection (4) shall not be construed to exempt such associations from any other provision of this section. Notwithstanding any other provision of law, no cooperative electric association shall establish, charge, or collect a discriminatory or preferential rate, charge, rule, or regulation which would be violative of section 40-3-106 (1) or section 40-3-111. Upon complaint filed by any member or customer of a cooperative electric association or by any affected public utility, the commission shall determine whether the rate, charge, rule, or regulation in question is contrary to this section, section 40-3-106 (1), or section 40-3-111.

(b) (I) Paragraph (a) of this subsection (4) shall not be applicable to a cooperative electric association which has voted to exempt itself from regulation pursuant to the

provisions of section 40-9.5-103. Regulation of such cooperative electric associations shall be in the manner provided in article 9.5 of this title.

(II) Repealed.

(c) and (c.1) Repealed.

Source: **L. 13:** p. 495, § 48. **C.L.** § 2957. **CSA:** C. 137, § 48. **CRS 53:** § 115-6-11. **L. 63:** p. 760, § 1. **C.R.S. 1963:** § 115-6-11. **L. 69:** p. 946, § 43. **L. 81:** (1) and (2) amended and (4) added, pp. 1914, 1920, 1922, §§ 2, 1, 2, effective July 1. **L. 82:** (4) amended, p. 587, § 1, effective February 19. **L. 83:** (4) amended, p. 1572, § 3, effective July 1. **L. 84:** (1) and (2) amended, p. 1041, § 7, effective July 1. **L. 85:** (4)(b)(I) amended and (4)(b)(II) repealed, pp. 1301, 1303, §§ 2, 6, effective April 5. **L. 89:** (3) amended, p. 1531, § 14, effective April 12; (4)(c) and (4)(c.1) added, pp. 1538, 1539, §§ 1, 1, effective April 28. **L. 94:** (2)(a) amended and (2)(c) added, p. 612, § 4, effective April 8. **L. 2000:** (1)(c) and (2)(b) repealed, p. 217, § 5, effective March 29. **L. 2010:** (1)(d) added and (2)(a) amended, (HB 10-1365), ch. 140, p. 475, §§ 2, 3, effective April 19.

Editor's note: (1) Amendments to subsection (2) by House Bill 81-1036 and House Bill 81-1038 were harmonized.

(2) Subsection (4)(c.1) provided for the repeal of subsection (4)(c) and (4)(c.1), effective July 1, 1992. (See L. 89, p. 1539.)

Cross references: For the legislative declaration contained in the 1994 act amending subsection (2)(a) and enacting subsection (2)(c), see section 1 of chapter 102, Session Laws of Colorado 1994.

ANNOTATION

The public utilities commission may, in its discretion, conduct a hearing before a proposed tariff is permitted to go into effect but such hearing is not required by statute or rule even though a timely protest was filed. *Office of Consumer Counsel v. P.U.C.*, 752 P.2d 1049 (Colo. 1988).

Abbreviated hearing procedure permitted. Where the commission believes that an economic emergency may exist, and it may permit new rates to become effective without a hearing, participatory values are better served by allowing the commission to conduct a hearing with abbreviated procedures and a limitation on the issues to be considered. *Pub. Serv. Co. v. Pub. Utils. Comm'n*, 653 P.2d 1117 (Colo. 1982).

New rates not held invalid. There was no merit to the contention that new rates were invalid because the public utilities commission, in not suspending them, improperly permitted them to go into effect without any hearing. Such discretion is delegated to the public utilities commission by the general assembly in section 40-3-104, and the discretionary power to suspend is set forth in this section. *Pub. Utils. Comm'n v. District Court*, 186 Colo. 278, 527 P.2d 233 (1974).

The determination of rate of return must be made by considering, among other things, the degree of risk involved on the part of the investors. The monopoly which the utility enjoys cannot be exerted to the public detriment to impose oppressive rates. *Pub. Utils. Comm'n v. Northwest Water Corp.*, 168 Colo. 154, 451 P.2d 266 (1969).

This section does not require commission to promulgate revised rates within 210 days following suspension of the rates filed by the utility, but, after the 210 days have elapsed, the utility is entitled to charge the rates originally filed with the commission until such time as the commission enters its rate order. *Colo. Ute Elec. Ass'n v. Pub. Utils. Comm'n*, 198 Colo. 534, 602 P.2d 861 (1979).

A federal court may not intervene where the commission suspends rates on an interim basis prior to the exhaustion of state remedies, for the necessity for exhaustion of administrative remedies has long been recognized, and an application for federal court injunction in a state rate case is premature prior to a review proceeding before the courts of the state, unless such are unreasonably delayed or inadequate. *Mountain States Tel. & Tel. Co. v. Pub. Utils. Comm'n*, 345 F. Supp. 80 (D. Colo. 1972).

After completion of hearings if no decision is forthcoming, requested increased rates will go into effect as a matter of law and regardless of decision. *Mountain States Tel. & Tel. Co. v. Pub. Utils. Comm'n*, 345 F. Supp. 80 (D. Colo. 1972).

Section applicable even where existing rates unjust. This section is to be applied in proceedings in which a tariff for a new rate is filed, even where existing rates are unjust under § 40-3-111. *Peoples Natural Gas Div. v. Pub. Utils. Comm'n*, 197 Colo. 152, 590 P.2d 960 (1979).

The provisions of subsection (2) (a) allow the commission to consider test year data but do

not require the consideration of such data. Office of Consumer Counsel v. P.U.C., 752 P.2d 1049 (Colo. 1988).

In adopting rate structures, PUC is not limited to options formally presented by the parties at a hearing or to options supported by quantitative evidence. Rate-making is not an exact science but a legislative function, and quantitative evidence is not the only type of evidence that may support a PUC decision. Furthermore, the duty of the PUC is to adopt fair and reasonable rate structures and it is not limited to options formally presented. Integrated Network Servs. v. PUC, 875 P.2d 1373 (Colo. 1994).

The commission's statutory suspension power is the only power abolished by subsec-

tion (4) (a) for the benefit of cooperative electric associations. This section only eases the burden on cooperatives resulting from suspension of rates during the hearing process and does not exempt such cooperatives from commission review of tariffs and charges. Colo. Ute-Elec. v. P.U.C., 760 P.2d 627 (Colo. 1988), appeal dismissed for want of a properly presented federal question, 489 U.S. 1061, 109 S. Ct. 1333, 103 L. Ed.2d 804 (1989).

Applied in Mountain States Tel. & Tel. Co. v. Pub. Utils. Comm'n, 195 Colo. 130, 576 P.2d 544 (1978); City of Loveland v. Pub. Utils. Comm'n, 195 Colo. 298, 580 P.2d 381 (1978).

40-6-112. Alteration or amendment of decision - decisions final in collateral actions. (1) The commission, at any time upon notice to the public utility affected, and after opportunity to be heard as provided in the case of complaints, may rescind, alter, or amend any decision made by it. Any decision rescinding, altering, or amending a prior decision, when served upon the public utility affected, shall have the same effect as original decisions.

(2) In all collateral actions or proceedings, the decisions of the commission which have become final shall be conclusive.

Source: L. 13: p. 496, § 49. C.L. § 2958. CSA: C. 137, § 49. CRS 53: § 115-6-12. C.R.S. 1963: § 115-6-12. L. 69: p. 947, § 44.

ANNOTATION

- I. General Consideration.
- II. Amendment of Decision.
- III. Collateral Action.

I. GENERAL CONSIDERATION.

Applied in Consolidated Freightways Corps. v. Pub. Utils. Comm'n, 158 Colo. 239, 406 P.2d 83 (1965); Pub. Utils. Comm'n v. Grand Valley Rural Power Lines, 167 Colo. 257, 447 P.2d 27 (1968).

II. AMENDMENT OF DECISION.

Full hearing required if right of grant in certificate is to be removed. Since rights granted under a certificate of authority are property rights, due process requires a full hearing if anything granted in the certificate is to be taken away. The public utilities commission is the proper authority to interpret its own certificate. Pub. Utils. Comm'n v. Grand Valley Rural Power Lines, 167 Colo. 257, 447 P.2d 27 (1968).

Commission may remove prior restrictions under its statutory authority to amend certificate when it is in the interest of public convenience and necessity to do so. Rocky Mt. Natural Gas Co. v. Pub. Utils. Comm'n, 199 Colo. 352, 617 P.2d 1175 (1980).

The commission's right to amend does not authorize an amendment which provides for an entirely new service which a certificate to be amended expressly precludes. Pub. Utils. Comm'n v. Donahue, 138 Colo. 492, 335 P.2d 285 (1959); Colo. Transp. Co. v. Pub. Utils. Comm'n, 141 Colo. 203, 347 P.2d 505 (1959).

Notice requirement. The public utilities commission acts without authority when it attempts to amend or modify an order duly entered as a part of its action in passing upon an application for a rehearing of such order. Rescission, alteration, or amendment of orders must be upon notice to the public utility affected, and after opportunity to be heard, as provided in this section. Snell v. Pub. Utils. Comm'n, 108 Colo. 162, 114 P.2d 563 (1941); Pub. Utils. Comm'n v. Colo. Motorway, Inc., 165 Colo. 1, 437 P.2d 44 (1968).

No alteration of certificate without showing in evidence. Where a certificate of convenience and necessity permitted sight-seeing service by automobiles of a capacity not exceeding seven passengers, an application to amend such certificate to permit such service by multi-passenger buses, the record showing no evidence to indicate that such additional service is needed or that provided by a protestant inadequate, no alteration of petitioner's certificate may be

granted. *Colo. Transp. Co. v. Pub. Utils. Comm'n*, 141 Colo. 203, 347 P.2d 505 (1959).

This section is sufficient authority for the commission to send out its notice to "for hire" carriers to file application with commission to clarify their respective authorities relative to intermediate points. *Pub. Utils. Comm'n v. Weicker Transp. Co.*, 102 Colo. 211, 78 P.2d 633 (1938).

Factors that the PUC may consider in determining whether a rate is just and reasonable do not include a reward based on litigation and to "motivate future results". *Office of Consumer Counsel v. Pub. Serv. Co.*, 877 P.2d 867 (Colo. 1994).

III. COLLATERAL ACTION.

Decisions prior to legislation. The fact that by legislative action in 1961 an elective association was brought under the jurisdiction of the

public utilities commission does not permit it to now make collateral attack on the commission's action which occurred some 25 years ago. *Southeast Colo. Power Ass'n v. Pub. Utils. Comm'n*, 163 Colo. 92, 428 P.2d 939 (1967).

Requirement of rule promulgated by commission held conclusive in collateral action. Where the commission's decision promulgating a rule which requires the commission to adhere to the past test year in fixing rates has become final for failure of direct attack, the rule's requirement of the use of the past test year is conclusive in a collateral action involving objections to rates set by the commission. *Mountain States Tel. & Tel. Co. v. Pub. Utils. Comm'n*, 186 Colo. 260, 527 P.2d 524 (1974).

Merits of rate proceedings held to be beyond collateral attack in an appeal of an award of attorney fees. *Lake Durango Water Co. v. Pub. Utils. Comm'n*, 67 P.3d 12 (Colo. 2003).

40-6-113. Transcripts - record on review. (1) In any proceeding the commission, any single commissioner, or any administrative law judge may order a transcript of all or any part of such proceeding. The cost of preparing the transcript shall be paid by the commission. If any party to any proceeding seeks to reverse, modify, or annul a recommended decision of a single commissioner or administrative law judge, or a decision of the commission, in the manner as provided in this section, then such party, and not the commission, shall pay the cost of the transcript of such proceeding or the applicable portion thereof in accordance with the provisions of this section.

(2) Any party who seeks to reverse, modify, or annul the recommended decision of a single commissioner or administrative law judge or the decision of the commission shall promptly notify the official reporter of the parts of the transcript of the proceedings which shall be prepared and certified by the official reporter. A copy of this notification shall be served upon the commission and all parties. Within ten days thereafter any other party or the commission may serve and file a designation of additional parts of the transcript of proceedings which is to be included. The transcript or the parts thereof which may be designated by the parties or the commission shall be prepared by the official reporter and certified by such reporter, and when completed shall be filed with the commission. The transcript, as so prepared, shall be filed with the commission on or before the time the first pleading is required to be filed with the commission by the party, whether such pleading is exceptions or a petition for rehearing, reconsideration, or reargument. The commission, upon request timely made, may extend the time within which to file the transcript, and if the transcript cannot reasonably be prepared within the time prescribed, the commission shall extend the time for filing both the transcript and the first pleading of the party.

(3) The cost of preparing the transcript shall be advanced by the party seeking to reverse, annul, or modify the recommended decision of a commissioner or administrative law judge, or the decision of the commission; except that the commission may upon objections by such party order any other party to advance payment forthwith for the cost of preparing such parts of the transcripts designated by them, as the commission shall determine.

(4) It is not necessary for a party to cause a transcript to be filed as provided in this section in any case where the party does not seek to amend, modify, annul, or reverse basic findings of fact which shall be set forth in the recommended decision of a commissioner or administrative law judge or in the decision of the commission. If such transcript is not filed pursuant to the provisions of this section for consideration with the party's first pleading, it shall be conclusively presumed that the basic findings of fact, as distinguished from the conclusions and reasons therefor and the order or requirements thereon, are complete and accurate.

(5) Instead of designating portions of the transcript as provided in subsection (2) of this section, the parties, by written stipulation filed with the commission and acceptable to the commission, may designate the portions of the transcript to be filed with the commission. The transcript, as agreed upon and subject to the approval of the commission, shall be filed with the commission.

(6) In case of an action to review an order or decision of the commission, a transcript of such testimony or the affidavits or other evidence under the shortened or informal procedure, together with all exhibits or copies thereof introduced and all information secured by the commission on its own initiative and considered by it in rendering its order or decision, and the pleadings, record, and proceedings in the case, shall constitute the record of the commission. On review of an order or decision of the commission, the party seeking such review and the commission may stipulate that a certain question alone or a particular portion only of the evidence shall be certified to the district court for its judgment, whereupon such stipulation and the question and the evidence specified shall constitute the record on review.

Source: L. 13: p. 496, § 50. C.L. § 2959. CSA: C. 137, § 50. CRS 53: § 115-6-13. C.R.S. 1963: § 115-6-13. L. 69: p. 947, § 45. L. 89: (1) to (4) amended, p. 1531, § 15, effective April 12.

ANNOTATION

Effect of failure by party to file transcript.

If a party who seeks to reverse, modify, or annul a recommended decision of a commission examiner or the decision of the commission fails to file a transcript, the basic findings of fact of the commission are conclusively presumed to be complete and accurate. *Howard v. Pub. Utils. Comm'n*, 187 Colo. 138, 528 P.2d 1303 (1974).

The commission may rely on evidence other than that obtained at a formal hearing; thus the commission is allowed to consider a broader range of information in making an adjudicatory decision than that allowed by strict application of § 24-4-105 (14) of the "State Administrative Procedure Act". *Colo. Energy Advocacy v. Pub. Serv. Co.*, 704 P.2d 298 (Colo. 1985).

All such evidence must be placed in the public record, and the commission must provide an

opportunity for the parties to comment thereon. *Colo. Energy Advocacy v. Pub. Serv. Co.*, 704 P.2d 298 (Colo. 1985).

While subsection (6) does not generally require the commission to include advisory memoranda as part of the record, when staff injects new factual information into the proceedings through an advisory memorandum read at the open meeting deliberation of the commissioners and this factual information has not otherwise been made part of the record, the commission must include such factual information in the record for purposes of judicial review under § 40-6-115. *Bd. of County Comm'rs of San Miguel v. Pub. Utils. Comm'n*, 157 P.3d 1083 (Colo. 2007).

Applied in *Colo. Ute Elec. Ass'n v. Pub. Utils. Comm'n*, 198 Colo. 534, 602 P.2d 861 (1979).

40-6-114. Reconsideration, reargument, or rehearing - application - basis of review - order - exception. (1) After a decision has been made by the commission or after a decision recommended by an individual commissioner or administrative law judge has become the decision of the commission, as provided in this article, any party thereto may within twenty days thereafter, or within such additional time as the commission may authorize upon request made within such period, make application for rehearing, reargument, or reconsideration of the same or of any matter determined therein. Such application shall be governed by such general rules as the commission may establish and shall specify with particularity the grounds upon which the applicant considers the decision unlawful. Any such application shall, within thirty days after the filing thereof, be considered and acted upon by the commission. Failure to act upon the application within such period shall constitute a denial thereof. Rehearing, reargument, or reconsideration may be granted if sufficient reason therefor is shown.

(2) An application for rehearing, reargument, or reconsideration of a decision of the commission made in accordance with the provisions of this section and the rules and regulations of the commission shall not stay or postpone such decision unless the commission, upon motion by the party seeking such stay or postponement or the commission upon

its own motion, so orders; except that orders of the commission issued for the installation of automatic or other safety appliance signals or devices at railroad crossings shall be processed and handled to completion when such application deals solely with the matter of allocation of the costs thereof among the railroad company and the state and the political subdivisions pursuant to section 40-4-106.

(3) If after rehearing, reargument, or reconsideration of a decision of the commission it appears that the original decision is in any respect unjust or unwarranted, the commission may reverse, change, or modify the same accordingly. Any decision made after rehearing, reargument, or reconsideration, reversing, changing, or modifying the original decision may be subject to the same provisions with respect to rehearing, reargument, or reconsideration as an original decision or any such decision may be subject to judicial review as provided in section 40-6-115, at the option of the party seeking review. If the commission denies said application, the original order shall become effective according to its terms, unless the commission otherwise orders, except as provided in section 40-6-116.

(4) If no application for rehearing, reargument, or reconsideration has been made or, if made, is withdrawn, a suit to enforce, enjoin, suspend, modify, or set aside any final decision of the commission, in whole or in part, may be brought in a district court of the state of Colorado as set forth in this article; except that, if any party to a proceeding applies for reconsideration, reargument, or rehearing, no other party may appeal until the commission has ruled on the application. For purposes of judicial review, a decision on an application for rehearing, reargument, or reconsideration shall be deemed final on the date said decision is served on the parties to the proceeding.

(5) Any court may stay or suspend, in whole or in part, the operation of any commission decision under section 40-6-116, even though the commission had not been previously requested to suspend or stay such decision.

(6) (Deleted by amendment, L. 93, p. 2065, § 20, effective July 1, 1993.)

Source: L. 13: p. 496, § 51. C.L. § 2960. CSA: C. 137, § 51. L. 53: p. 470, § 1. CRS 53: § 115-6-14. L. 61: p. 630, § 1. C.R.S. 1963: § 115-6-14. L. 69: p. 949, § 46. L. 77: (2) amended, p. 1859, § 1, effective May 20. L. 81: (2) amended, p. 1924, § 1, effective March 27. L. 89: (1) amended, p. 1532, § 16, effective April 12. L. 92: (3), (4), and (5) amended and (6) added, p. 2130, § 2, effective July 1. L. 93: (4) and (6) amended, p. 2065, § 20, effective July 1.

ANNOTATION

Law reviews. For article, "Prosecuting an Appeal from a Decision of the Colorado Public Utilities Commission", see 16 Colo. Law. 2163 (1987).

The act makes provision for review on rehearing which is comparable to a motion for new trial in judicial proceedings, and is, of course, a prerequisite to judicial review. Pub. Utils. Comm'n v. Northwest Water Corp., 168 Colo. 154, 451 P.2d 266 (1969).

This section calls for a motion for rehearing within 20 days after a decision of the commission. Mountain States Tel. & Tel. Co. v. Pub. Utils. Comm'n, 345 F. Supp. 80 (D. Colo. 1972).

An applicant for expanded authority acquires no final rights until the time for filing a petition for rehearing has expired. Denver Clean-Up Serv., Inc. v. Pub. Utils. Comm'n, 174 Colo. 329, 483 P.2d 974 (1971).

Action on application for rehearing is limited to grant or denial. It is clear from the wording of this section that, in passing upon an

application for rehearing, the permissible affirmative action of the commission does not go further than to grant or deny the application. Snell v. Pub. Utils. Comm'n, 108 Colo. 162, 114 P.2d 563 (1941).

If an application for rehearing is granted, the original order or decision is not to be abrogated, changed, or modified until after such rehearing and as a result thereof. Snell v. Pub. Utils. Comm'n, 108 Colo. 162, 114 P.2d 563 (1941).

The public utilities commission acts without authority when it attempts to amend or modify an order duly entered as a part of its action in passing upon an application for a rehearing of such order. Rescission, alteration, or amendment of orders must be upon notice to the public utility affected, and after opportunity to be heard, as provided in section 40-6-112. Snell v. Pub. Utils. Comm'n, 108 Colo. 162, 114 P.2d 563 (1941).

However, commission need not state conclusion that original order unjust. Subsection

(3) provides that if, after rehearing, "the commission shall be of the opinion that the original order...is in any respect unjust or unwarranted, or should be changed, the commission may abrogate, change or modify the same". To deny an application for expanded authority on rehearing after an order granting such authority, the public utilities commission would necessarily have to conclude that the original order was unjust or unwarranted, and it would seem to be a useless thing to require that to be stated. *Denver Clean-Up Serv., Inc. v. Pub. Utils. Comm'n*, 174 Colo. 329, 483 P.2d 974 (1971).

Upon denial of application, order becomes final. If an application for rehearing is denied, the order or decision to which the application was addressed becomes final. *Snell v. Pub. Utils. Comm'n*, 108 Colo. 162, 114 P.2d 563 (1941).

Court will not review if commission judgment not final. Unless and until a matter before the public utilities commission is reduced to final judgment, settling all the issues between the parties, the court will not review it. *Denver-Climax Truck Line v. Jim Chelf, Inc.*, 156 Colo. 372, 399 P.2d 244 (1965); *Pub. Utils. Comm'n v. Poudre Valley Rural Elec. Ass'n*, 173 Colo. 364, 480 P.2d 106 (1970).

Failure to apply for a second hearing regarding the commission's rehearing decision which modified a prior tariff decision precludes judicial review of such rehearing decision. *Office of Consumer Counsel v. P.U.C.*, 752 P.2d 1049 (Colo. 1988).

Court may not ignore conditions on which objector's intervention was granted by commission, which precluded challenge to the commission's procedures and which objector accepted. *Hausam v. P.U.C.*, 751 P.2d 627 (Colo. 1988).

Service by mail on attorney of record is sufficient. In review by certiorari proceedings in the district court of a commission decision, an indispensable party need not receive personal service of process through its registered agent for service, and service by mail upon the attorney of record in the administrative hearing is sufficient. *North Glenn Sub. Co. v. District Court*, 187 Colo. 409, 532 P.2d 332 (1975).

Failure to raise question waives it. Where the applicant argued in the supreme court that

the public utilities commission in issuing a new order after rehearing had made no finding that the original order was unjust or unwarranted, but it had not at any time raised this question before the commission, nor mentioned it in its petition for certiorari in the district court, it had waived the point. *Denver Clean-Up Serv., Inc. v. Pub. Utils. Comm'n*, 174 Colo. 329, 483 P.2d 974 (1971).

Petition not filed within 20-day period following decision of commission is disallowed. *Hausam v. P.U.C.*, 751 P.2d 627 (Colo. 1988).

Objector has no standing to petition for reconsideration where he has previously been denied intervenor status because proceeding had been terminated prior to objector's petition for intervention. *Hausam v. P.U.C.*, 751 P.2d 627 (Colo. 1988).

Petition for reconsideration of rate increase was premature and properly struck where commission has neither approved nor denied such rate increase. *Hausam v. P.U.C.*, 751 P.2d 627 (Colo. 1988).

Proceedings under this section are special statutory proceedings to which rules of civil procedure do not apply when inconsistent or in conflict with the practice and procedure as provided by statute. *Peoples Natural Gas Div. v. P.U.C.*, 698 P.2d 255 (Colo. 1985).

Subsection (3) does not require a subsequent decision of the commission to be a substantial modification of the original decision in order for the provisions of said subsection to be applicable. *Office of Consumer Counsel v. P.U.C.*, 752 P.2d 1049 (Colo. 1988).

Where administrative remedies are provided by statute, the statutory procedure must be followed when the matter complained of is within the jurisdiction of the administrative authority. Unless the administrative remedies are exhausted, it can never be known but that a correction would ensue if the administrative authority were given full opportunity to pass upon the matter. *Denver-Laramie-Walden Truck Line v. Denver-Fort Collins Freight Serv., Inc.*, 156 Colo. 366, 399 P.2d 242 (1965).

Applied in *Pollard Contracting Co. v. Pub. Utils. Comm'n*, 644 P.2d 7 (Colo. 1982); *Pub. Serv. Co. v. Pub. Utils. Comm'n*, 644 P.2d 933 (Colo. 1982); *Union Rural Elec. Ass'n v. Pub. Utils. Comm'n*, 661 P.2d 247 (Colo. 1983).

40-6-115. Review by district court - mandamus. (1) Within thirty days after a final decision by the commission in any proceeding, any party to the proceeding before the commission may apply to the district court for a writ of certiorari or review for the purpose of having the lawfulness of the final decision inquired into and determined. Such writ shall be made returnable not later than thirty days after the date of issuance and shall direct the commission to certify its record in the proceeding to said court. On the return day, the cause shall be heard by the district court unless, for a good reason shown, the same be continued. No new or additional evidence may be introduced in the district court, but the cause shall be heard on the record of the commission as certified by it. The commission and each party to the action or proceeding before the commission shall have the right to appear in the

review proceedings.

(2) The findings and conclusions of the commission on disputed questions of fact shall be final and shall not be subject to review, except that, in any proceeding wherein the validity of any order or decision is challenged on the ground that it violates any right of a petitioner under the constitution of the United States or the constitution of the state of Colorado, the district court shall exercise an independent judgment on the law and the facts, and the findings or conclusions of the commission material to the determination of the said constitutional question shall not be final.

(3) Upon review, the district court shall enter judgment either affirming, setting aside, or modifying the decision of the commission. So far as necessary to the decision and where presented, the district court shall decide all relevant questions of law and interpret all relevant constitutional and statutory provisions. The review shall not extend further than to determine whether the commission has regularly pursued its authority, including a determination of whether the decision under review violates any right of the petitioner under the constitution of the United States or of the state of Colorado, and whether the decision of the commission is just and reasonable and whether its conclusions are in accordance with the evidence.

(4) The provisions of the Colorado rules of civil procedure relating to writs of certiorari or review, so far as applicable and not in conflict with the provisions of this title, shall apply to proceedings had in the district court under the provisions of this section. No court of this state, except the district court to the extent specified, shall have jurisdiction to review, reverse, correct, or annul any order or decision of the commission, or to suspend or delay the execution or operation thereof, or to enjoin, restrain, or interfere with the commission in the performance of its official duties; but an action in the nature of mandamus shall lie from the district court to the commission in all proper cases.

(5) All actions for review shall be commenced and tried in the district court in and for the county in which the petitioner resides, or if a corporation or partnership in the county in which it maintains its principal office or place of business, or in the district court of the city and county of Denver, at the option of the petitioner. Appellate review may be obtained in the supreme court concerning any final judgment of the district court on review, affirming, setting aside, or modifying any decision of the commission, in the same manner and with the same effect as appellate review of judgments of the district court in other civil actions.

Source: L. 13: p. 497, § 52. C.L. § 2961. CSA: C. 137, § 52. L. 45: p. 531, § 8. CRS 53: § 115-6-15. C.R.S. 1963: § 115-6-15. L. 69: p. 949, § 47. L. 75: (1) and (4) amended, p. 227, § 90, effective July 16. L. 89: (4) amended, p. 1532, § 17, effective April 12. L. 92: (1) amended, p. 2131, § 3, effective July 1. L. 93: (1) amended, p. 2065, § 21, effective July 1.

ANNOTATION

- I. General Consideration.
- II. Findings of Fact.
- III. Scope of Review.
- IV. Jurisdiction.

I. GENERAL CONSIDERATION.

Law reviews. For article, "Prosecuting an Appeal from a Decision of the Colorado Public Utilities Commission", see 16 Colo. Law. 2163 (1987). For article, "Winning an Appeal from a Decision of the Colorado Public Utilities Commission", see 17 Colo. Law. 1529 (1988). For article, "Can Colorado Administrative Agencies Settle Judicial Review Actions", see 19 Colo. Law. 835 (1990).

Procedure of section intended to be exclusive. By the provisions of this section, the general assembly intended this to be the exclusive procedure for reviewing orders and decisions of the public utilities commission made after a full hearing and presentation of evidence on the issues before the public utilities commission. *Mountain States Tel. & Tel. Co. v. Pub. Utils. Comm'n*, 182 Colo. 269, 513 P.2d 721 (1973); *Archibold v. Pub. Utils. Comm'n*, 933 P.2d 1323 (Colo. 1997).

No basis for review unless administrative remedies exhausted. When the public utilities commission decides to suspend the rates and hold hearings, the burden is on the public utility to establish that the proposed rates comply with law, and, unless a challenger exhausts this ad-

ministrative remedy, it has no basis for district court review. Pub. Utils. Comm'n v. District Court, 186 Colo. 278, 527 P.2d 233 (1974).

The party objecting to a decision of the commission has the burden of proving that the decision is unlawful. Pub. Utils. Comm'n v. Northwest Water Corp., 168 Colo. 154, 451 P.2d 266 (1969); CF&I Steel, L.P. v. Pub. Utils. Comm'n, 949 P.2d 577 (Colo. 1997).

In post-hearing, preappeal administrative proceeding, discovery should be available as matter of right only if the party alleging procedural irregularities first shows, by affidavit or other substantial factual evidence, that there is good cause to believe that ex parte communications, personal bias, or other impermissible considerations played a part in the tribunal's decision. Peoples Natural Gas Div. v. Pub. Utils. Comm'n, 626 P.2d 159 (Colo. 1981).

Ex parte exchanges between advocate and adjudicatory tribunal may not arbitrarily be screened from appellate scrutiny. Peoples Natural Gas Div. v. Pub. Utils. Comm'n, 626 P.2d 159 (Colo. 1981).

The return to an application for appellate review is merely the certification by the responding tribunal of the proceedings sought to be reviewed, and that, while the application sometimes commands the respondents to make answer, the certification of the record is the only answer and the only return to the application which the inferior tribunal is required to make. Pub. Utils. Comm'n v. Weicker Transf. & Storage Co., 168 Colo. 339, 451 P.2d 448 (1969).

Factual allegations of application for appellate review are required to be accepted as uncontroverted in considering the propriety of the action of the court in quashing such application where record contained nothing beyond pleadings in district court and motion to quash challenged sufficiency of application. Snell v. Pub. Utils. Comm'n, 108 Colo. 162, 114 P.2d 563 (1941).

Application should not be quashed where it appears commission deviated from regular pursuit of authority. An application duly issued by judicial authority to review the action of the public utilities commission in connection with the issuance of a certificate of public necessity and convenience to a public utility, should not be quashed on motion where, from the facts alleged in the application, it appears that the commission deviated from the regular pursuit of its authority in connection with the matters involved. Snell v. Pub. Utils. Comm'n, 108 Colo. 162, 114 P.2d 563 (1941).

Judicial review barred unless applied for within 30 days. Unless an application for review of the acts of the public utilities commission is filed before the expiration of 30 days from the date of its final decision, judicial review is barred. Mayer v. Pub. Utils. Comm'n, 104 Colo. 619, 94 P.2d 125 (1939); Archibold v.

Pub. Utils. Comm'n, 933 P.2d 1323 (Colo. 1997).

The date of the hearing is by statute provided to be set on the same date as the return, but since it is also provided that the hearing date can be continued, it may be immaterial where the court set the hearing for a later date. Pub. Utils. Comm'n v. Weicker Transf. & Storage Co., 168 Colo. 339, 451 P.2d 448 (1969).

Service of process on attorney of record is sufficient. In review by certiorari proceedings in the district court of a commission decision, an indispensable party need not receive personal service of process through its registered agent for service, and service by mail upon the attorney of record in the administrative hearing is sufficient. North Glenn Sub. Co. v. District Court, 187 Colo. 409, 532 P.2d 332 (1975).

Judicial notice will not be taken of the records of the utilities commission. Denver & S. L. R. R. v. Chicago, B. & Q. R. R., 64 Colo. 229, 171 P. 74 (1918).

The utilities commission is under duty to obey the orders of the court. No excuses for disobedience will be received. Denver & S. L. R. R. v. Chicago, B. & Q. R. R., 67 Colo. 155, 185 P. 817 (1919).

This section governs the procedure for review of an order or decision of the public utilities commission by a district court. People v. District Court, 134 Colo. 324, 303 P.2d 692 (1956); Consolidated Freightways Corps. v. Pub. Utils. Comm'n, 158 Colo. 239, 406 P.2d 83 (1965).

Factors controlling review. Under this section the review in this court of the orders of the public utilities commission is controlled by the considerations applying in other cases, except as otherwise provided by the act. Denver & S. L. R. R. v. Chicago, B. & Q. R. R., 64 Colo. 229, 171 P. 74 (1918); Powell v. Colo. Pub. Utils. Comm'n, 956 P.2d 608 (Colo. 1998).

This section provides that no new or additional evidence may be introduced in a district court. People v. District Court, 134 Colo. 324, 303 P.2d 692 (1956).

In reviewing actions of the public utilities commission, the courts are limited to an examination of the record to determine whether there is competent evidence to support the finding and whether the commission acted in excess of its powers. Parrish v. Pub. Utils. Comm'n, 134 Colo. 192, 301 P.2d 343 (1956); Colo. Transp. Co. v. Pub. Utils. Comm'n, 141 Colo. 203, 347 P.2d 505 (1959).

Since decision of P.U.C. that it had subject matter jurisdiction over private operator of water system was not a final decision subject to judicial review, district court prematurely accepted jurisdiction to review P.U.C.'s decision and erroneously issued writ of prohibition. Keystone, A Div. of Ralston Purina v. Flynn, 769 P.2d 484 (Colo. 1989).

County has standing to seek judicial review of public utilities commission's decision. *Douglas County Bd. of Comm'rs v. Pub. Utils. Comm'n*, 829 P.2d 1303 (Colo. 1992).

Acceptance of rate pending review is not voluntary. Where an order of the commission prescribes a division of through rates between certain connecting railway companies, the acceptance of the rate so prescribed, by one of the companies complaining thereof, pending an application for appellate review of the same, is not to be held voluntary. The complaining company succeeding in its appeal is entitled to restitution of whatever it has been unlawfully deprived by complying with the rates. *Denver & S. L. R. R. v. Chicago, B. & Q. R. R.*, 67 Colo. 155, 185 P. 817 (1919).

Applied in *Colo. Mun. League v. Pub. Utils. Comm'n*, 197 Colo. 106, 591 P.2d 577 (1979); *Pub. Serv. Co. v. Pub. Utils. Comm'n*, 644 P.2d 933 (Colo. 1982); *Phoenix Power Partners v. Pub. Utils. Comm'n*, 952 P.2d 359 (Colo. 1998); *Trans Shuttle, Inc. v. Pub. Utils. Comm'n*, 89 P.3d 398 (Colo. 2004).

II. FINDINGS OF FACT.

Commission's findings on disputed facts not subject to review. Findings and conclusions of the commission on disputed questions of fact, when based on competent evidence, are final and not subject to review by the courts. *Atchison, T. & S. F. Ry. v. Pub. Utils. Comm'n*, 68 Colo. 92, 188 P. 747 (1920); *Pub. Utils. Comm'n v. Loveland*, 87 Colo. 556, 289 P. 1090 (1930); *Southeast Colo. Power Ass'n v. Pub. Utils. Comm'n*, 163 Colo. 92, 428 P.2d 939 (1967); *North E. Motor Freight, Inc. v. Pub. Utils. Comm'n*, 178 Colo. 433, 498 P.2d 923 (1972); *Contact-Colorado Springs, Inc. v. Mobile Radio Tel. Serv., Inc.*, 191 Colo. 180, 551 P.2d 203 (1976); *Mellow Yellow Taxi Co. v. Pub. Utils. Comm'n*, 644 P.2d 18 (Colo. 1982); *Jarco, Inc. v. Pub. Utils. Comm'n*, 2 P.3d 116 (Colo. 2000); *Lake Durango Water Co. v. Pub. Utils. Comm'n*, 67 P.3d 12 (Colo. 2003).

When two equally reasonable courses of action are open to the commission, a reviewing court cannot substitute its judgment for that of the commission in selecting the appropriate alternative. *Contact-Colorado Springs, Inc. v. Mobile Radio Tel. Serv., Inc.*, 191 Colo. 180, 551 P.2d 203 (1976); *City of Montrose v. Pub. Utils. Comm'n*, 629 P.2d 619 (Colo. 1981).

Full evidentiary hearing is not required. Where a party, represented by counsel, voluntarily waived a hearing and the ALJ made a decision and factual findings based on written submissions from the parties, the procedure comported with all applicable legal and constitutional requirements. *Jarco, Inc. v. Pub. Utils. Comm'n*, 2 P.3d 116 (Colo. 2000).

Findings of fact must be discernible to reviewing court. While findings of fact by the public utilities commission need not be presented in any particular form, and they may even be implied, where the commission purports to make such findings, they must be discernible to the reviewing court. *Caldwell v. Pub. Utils. Comm'n*, 200 Colo. 134, 613 P.2d 328 (1980).

Where there is competent evidence to support the findings of the public utilities commission, a reviewing court may not substitute its judgment for that of the commission. *Sangre De Cristo Elec. Ass'n v. Pub. Utils. Comm'n*, 185 Colo. 321, 524 P.2d 309 (1974); *Morey v. Pub. Utils. Comm'n*, 629 P.2d 1061 (Colo. 1981); *Colorado-Ute Elec. v. Pub. Utils. Comm'n*, 760 P.2d 627 (Colo. 1988); *CF&I Steel, L.P. v. Pub. Utils. Comm'n*, 949 P.2d 577 (Colo. 1997); *Pub. Serv. Co. v. Pub. Utils. Comm'n*, 26 P.3d 1198 (Colo. 2001).

Determination by the public utilities commission of whether a substantial opportunity for discrimination or unfair competition exists should not be disturbed unless it is unsupported by competent evidence or is arbitrary and capricious. *Mobile Pre-Mix Transit, Inc. v. Pub. Utils. Comm'n*, 618 P.2d 663 (Colo. 1980).

The exercise of discretion and judgment of the commission should not be interfered with by the reviewing court. *Atchison, T. & S. F. Ry. v. Pub. Utils. Comm'n*, 194 Colo. 263, 572 P.2d 138 (1977).

The general assembly contemplated that the reviewing court, since it does not have the aid of a staff and the expertise of the commission, should not undertake to duplicate the evaluation and judgment processes followed by the commission in arriving at its decision. *Atchison, T. & S. F. Ry. v. Pub. Utils. Comm'n*, 194 Colo. 263, 572 P.2d 138 (1977); *Pub. Serv. Co. v. P.U.C.*, 765 P.2d 1015 (Colo. 1988).

Except on a showing of a clear abuse of discretion, a reviewing court will not substitute its judgment for that of the commission as to the propriety of a particular billing practice. *City of Montrose v. Pub. Utils. Comm'n*, 629 P.2d 619 (Colo. 1981).

Evidence must be reviewed in the light most favorable to the commission's findings and decision. *Morey v. Pub. Utils. Comm'n*, 629 P.2d 1061 (Colo. 1981).

Order of commission is presumed to be reasonable. *Caldwell v. Pub. Utils. Comm'n*, 200 Colo. 134, 613 P.2d 328 (1980).

The findings and conclusions of the commission are presumed to be reasonable and valid and will not be disturbed if supported by substantial evidence in the record. *Morey v. Pub. Utils. Comm'n*, 629 P.2d 1061 (Colo. 1981).

A conflict in the evidence would deprive the trial court of its right to exercise its independent judgment on the facts. *Pub. Utils.*

Comm'n v. Northwest Water Corp., 168 Colo. 154, 451 P.2d 266 (1969).

Findings may be set aside if not supported by substantial evidence. But such findings and conclusions may be set aside or modified if based upon propositions of fact in support of which there is no substantial evidence. *Denver & S. L. R. R. v. Chicago, B. & Q. R. R.*, 64 Colo. 229, 171 P. 74 (1918); *Pub. Utils. Comm'n v. Loveland*, 87 Colo. 556, 289 P. 1090 (1930).

"Independent judgment on the law" is exercised in the context of this constitutional issue exception when the court determines whether the public utilities commission has regularly pursued its authority. This would involve whether the decision is based upon the evidence introduced before the commission at the hearing; whether its order is supported by findings of fact; whether the commission applied the legislative standards set forth for the guidance of the commission; and whether the commission acted within the authority conferred or went beyond it. *Pub. Utils. Comm'n v. Northwest Water Corp.*, 168 Colo. 154, 451 P.2d 266 (1969).

Under the judicial review provisions of this section, a court exercises its independent judgment when it makes a determination as to whether the public utilities commission has regularly pursued its authority. *Mountain States Tel. & Tel. Co. v. Pub. Utils. Comm'n*, 182 Colo. 269, 513 P.2d 721 (1973).

Commission's decision to use cost of service study prepared by commission's staff was supported by substantial evidence, notwithstanding differing expert opinions, evidence that the study contained errors, and the absence of some specific finding of the commission regarding objections to the study. The commission did not act arbitrarily and capriciously in accepting the staff's study under circumstances where the experts' opinions were varied and presented irreconcilable differences. Perfect mathematical precision is not required of such study and is not the standard by which the commission's decision is reviewed. In the absence of evidence that the staff study was inherently unsound, commission's decision should not be abandoned. *Consumer Counsel v. P.U.C.*, 786 P.2d 1086 (Colo. 1990).

In a rate case, the commission's inclusion of a merger savings adjustment and an adjustment reflecting the transition from one accounting method to another was within the commission's authority and was just and reasonable and supported by substantial evidence. *Pub. Serv. Co. v. Pub. Utils. Comm'n*, 26 P.3d 1198 (Colo. 2001).

Rate-making is not an exact science, but rather, a matter of reasoned judgment and the commission is not required to base its rate-making decisions on quantitative evidence sup-

ported by empirical data. *CF&I Steel, L.P. v. Pub. Utils. Comm'n*, 949 P.2d 577 (Colo. 1997).

Application of just and reasonable standard of review to P.U.C.'s authority to sanction. A sanction imposed by the P.U.C. is deemed to be just and reasonable if the sanction is within its statutory authority, has a rational foundation in fact, and is fairly proportionate to the seriousness of the violation given all of the circumstances of the case. *News & Film Serv. v. P.U.C.*, 787 P.2d 169 (Colo. 1990).

Applied in Colo. Municipal League v. P.U.C., 687 P.2d 416 (Colo. 1984); *Colorado-Ute Elec. v. P.U.C.*, 760 P. 2d 627 (Colo. 1988), appeal dismissed for want of a properly presented federal question, 489 U.S. 1061, 109 S. Ct. 1333, 103 L. Ed.2d 804 (1989); *City of Fort Morgan v. Pub. Utils. Comm'n*, 159 P.3d 87 (Colo. 2007).

III. SCOPE OF REVIEW.

Scope of review. Under this section, review by the courts of the decisions of the public utilities commission shall not extend further than to determine whether the commission has regularly pursued its authority, including a determination of whether an order or decision violates any constitutional right, and whether such order is just and reasonable and in accordance with the evidence. *Lepel v. District Court*, 33 Colo. 24, 78 P. 682 (1904); *Bulger v. People*, 61 Colo. 187, 156 P. 800 (1916); *Denver & S. L. R. R. v. Chicago, B. & Q. R. R.*, 64 Colo. 229, 171 P. 74 (1918); *People v. District Court*, 72 Colo. 525, 211 P. 626 (1923); *Pub. Utils. Comm'n v. Loveland*, 87 Colo. 556, 289 P. 1090 (1930); *State Bd. v. Savelle*, 90 Colo. 177, 8 P.2d 693 (1932); *Pub. Utils. Comm'n v. Town of Erie*, 92 Colo. 151, 18 P.2d 906 (1933); *Pub. Utils. Comm'n v. Watson*, 138 Colo. 108, 330 P.2d 138 (1958); *Colo. Transp. Co. v. Pub. Utils. Comm'n*, 141 Colo. 203, 347 P.2d 505 (1959); *Consolidated Freightways Corps. v. Pub. Utils. Comm'n*, 158 Colo. 239, 406 P.2d 83 (1965); *Pub. Utils. Comm'n v. Northwest Water Corp.*, 168 Colo. 154, 451 P.2d 266 (1969); *City of Montrose v. Pub. Utils. Comm'n*, 629 P.2d 619 (Colo. 1981); *RAM Broad. of Colo. v. P.U.C.*, 702 P.2d 746 (Colo. 1985); *Office of Consumer Counsel v. P.U.C.*, 752 P.2d 1049 (Colo. 1988); *Integrated Network Servs. v. PUC*, 875 P.2d 1373 (Colo. 1994); *Boulder Airporter v. Shuttlines*, 918 P.2d 1118 (Colo. 1996); *CF&I Steel, L.P. v. Pub. Utils. Comm'n*, 949 P.2d 577 (Colo. 1997); *Avicomm, Inc. v. Colo. Pub. Utils. Comm'n*, 955 P.2d 1023 (Colo. 1998).

Judicial review of a public utilities commission decision involves the issue of whether or not a public utilities commission decision is supported by adequate evidence and whether its order, particularly when there is disputed evidence, is supported by findings of fact. *Moun-*

tain States Tel. & Tel. Co. v. Pub. Utils. Comm'n, 182 Colo. 269, 513 P.2d 721 (1973).

The standard of review is limited to an examination of the record to determine whether the conclusions were supported by findings of fact, whether the findings of fact and conclusions were based upon adequate evidence, and whether the commission reached its decision by applying the appropriate constitutional and legislative standards. Atchison, T. & S. F. Ry. v. Pub. Utils. Comm'n, 194 Colo. 263, 572 P.2d 138 (1977).

Judicial review of public utilities commission, in determining who should receive certification in a new area, is limited to the issue of whether the commission has acted within its authority and whether there is sufficient evidence in the record as a whole to support the commission's decision. Rocky Mt. Natural Gas Co. v. Pub. Utils. Comm'n, 199 Colo. 352, 617 P.2d 1175 (1980).

Because the public utilities commission is an expert commission with fact-finding and policy-making authority, judicial review of a commission rate decision is relatively narrow. City of Montrose v. Pub. Utils. Comm'n, 629 P.2d 619 (Colo. 1981); CF&I Steel, L.P. v. Pub. Utils. Comm'n, 949 P.2d 577 (Colo. 1997).

Same standard applies in supreme court on appeal as in district court on initial review. Jarco, Inc. v. Pub. Utils. Comm'n, 2 P.3d 116 (Colo. 2000).

Court's failure to determine whether commission acted pursuant to authority does not invalidate decision. When a trial court carries out its statutory duty by affirming a decision of the commission, the court's decision is not invalid on the theory that it did not properly review the case because it did not determine whether or not the commission acted pursuant to its authority or whether such action was just and reasonable. North E. Motor Freight, Inc. v. Pub. Utils. Comm'n, 178 Colo. 433, 498 P.2d 923 (1972).

Court has duty to set aside where decision not supported by substantial evidence. If a trial court concludes that there is not substantial evidence to support a decision of the commission under the record as made, it is the duty of the court to set aside that decision on that very ground. People v. District Court, 134 Colo. 324, 303 P.2d 692 (1956); Consolidated Freightways Corps. v. Pub. Utils. Comm'n, 158 Colo. 239, 406 P.2d 83 (1965).

Decisions which are not supported by substantial evidence must be set aside. City of Montrose v. Pub. Utils. Comm'n, 629 P.2d 619 (Colo. 1981); Home Builders Ass'n of Metro. Denver v. Pub. Utils. Comm'n, 720 P.2d 552 (Colo. 1986); CF&I Steel, L.P. v. Pub. Utils. Comm'n, 949 P.2d 577 (Colo. 1997).

Where P.U.C.'s findings are factually inconsistent, the court cannot perform even its limited

review function of determining whether competent evidence in the record supports the findings, and the order of the P.U.C. is set aside as arbitrary and capricious. Peoples Natural Gas Div. v. P.U.C., 698 P.2d 255 (Colo. 1985); Colorado-Ute Elec. v. P.U.C., 760 P.2d 627 (Colo. 1988), appeal dismissed, 489 U.S. 1061, 109 S. Ct. 1333, 103 L. Ed.2d 804 (1989).

While findings of the P.U.C. which are supported by the evidence may not be set aside, findings of the commission not supported by evidence cannot be upheld on appeal. J.C. Trucking v. P.U.C., 776 P.2d 366 (Colo. 1989).

When determining whether there is substantial evidence to support a decision of the commission, the reviewing court must view the record in a light most favorable to the commission's decision. Ace West Trucking v. P.U.C., 788 P.2d 755 (Colo. 1990); Boulder Airporter v. Shuttlines, 918 P.2d 1118 (Colo. 1996); CF&I Steel, L.P. v. Pub. Utils. Comm'n, 949 P.2d 577 (Colo. 1997).

To enable reviewing court to determine whether commission's decision is in accordance with the evidence under this section, § 40-6-113 (6) must be construed to incorporate into the record all factual information considered by the commission, including factual information contained in an advisory memorandum that was read at an open meeting of the commissioners and that was not otherwise made part of the record. Bd. of County Comm'rs of San Miguel v. Pub. Utils. Comm'n, 157 P.3d 1083 (Colo. 2007).

Mandamus will lie when action has been taken arbitrarily or if it reflects a gross abuse of discretion, regardless of whether a governmental proceeding is quasi-judicial in nature. Peoples Natural Gas Div. v. Pub. Utils. Comm'n, 626 P.2d 159 (Colo. 1981); Integrated Network Servs. v. PUC, 875 P.2d 1373 (Colo. 1994).

Mandamus is only justified when a state agency has failed to perform a statutory duty or to adhere to its statutory responsibility. Peoples Natural Gas Div. v. Pub. Utils. Comm'n, 626 P.2d 159 (Colo. 1981); Keystone, A Div. of Ralston Purina Co. v. Flynn, 769 P.2d 484 (Colo. 1989).

Mandamus is improper if court must give directions about the manner in which administrative discretion is to be exercised. Peoples Natural Gas Div. v. Pub. Utils. Comm'n, 626 P.2d 159 (Colo. 1981).

Mandamus not available to enjoin P.U.C. from exercising subject matter jurisdiction over private operator of water system alleged to be public utility when operator did not demonstrate that appellate review was not adequate remedy and did not seek to compel performance of any duty imposed upon P.U.C. by statute. Keystone, A Div. of Ralston Purina v. Flynn, 769 P.2d 484 (Colo. 1989).

Supreme court's duty in review. This section requires the supreme court to set aside a decision of the public utilities commission which is unjust and discriminatory or arbitrary and capricious. *City of Montrose v. Pub. Utils. Comm'n*, 197 Colo. 119, 590 P.2d 502 (1979).

Generally, the supreme court will defer to the commission's interpretation of its own language. *Sangre De Cristo Elec. Ass'n v. Pub. Utils. Comm'n*, 185 Colo. 321, 524 P.2d 309 (1974); *CF&I Steel, L.P. v. Pub. Utils. Comm'n*, 949 P.2d 577 (Colo. 1997).

But the supreme court will set aside actions or interpretations that are clearly erroneous, arbitrary, in excess of the commission's authority, or not in accordance with the law. *Sangre de Cristo Elec. Ass'n, Inc. v. Pub. Utils. Comm'n*, 524 P.2d 309 (Colo. 1974); *CF&I Steel, L.P. v. Pub. Utils. Comm'n*, 949 P.2d 577 (Colo. 1997).

Interpretation of contract language is generally a question of law, and the commission's interpretation, though entitled to respectful consideration, is not controlling. *Union Rural Elec. Ass'n v. Pub. Utils. Comm'n*, 661 P.2d 247 (Colo. 1983).

In a proceeding to review an order of the public utilities commission, a district court under this section may affirm, set aside, or modify the order, but it has no authority to remand the case to the commission for further hearings. *Denver & S. L. R. R. v. Chicago, B. & Q. R. R.*, 64 Colo. 229, 171 P. 74 (1918); *Colo. Power Co. v. Halderman*, 295 F. 178 (D. Colo. 1924); *People v. District Court*, 134 Colo. 324, 303 P.2d 692 (1956).

A district court is limited to a review of the record as presented and has no power to remand a case for an expansion of the commission's findings or for a rehearing. *Haney v. Pub. Utils. Comm'n*, 194 Colo. 481, 574 P.2d 863 (1978).

District court also has power to affirm portions of commission's decision supported by record and to reverse those not supported by record. *Pub. Utils. Comm'n v. District Court*, 181 Colo. 24, 506 P.2d 371 (1973).

A court cannot modify order by fixing division or rates. *Denver & S. L. R. R. v. Chicago, B. & Q. R. R.*, 64 Colo. 229, 171 P. 74 (1918).

Authority of district court to suspend public utility rates pending appeal necessarily creates the power and the duty to order restitution if the suspended rates are upheld on appeal. *Atlantic Richfield v. District Court*, 794 P.2d 253 (Colo. 1990).

In remanding a cause back to the commission for a rehearing, a district court exceeds its jurisdiction and abuses its discretion. This leaves a petitioner without a plain, speedy, and adequate remedy and without any remedy at all. *People v. District Court*, 134 Colo. 324, 303 P.2d

692 (1956); *Pub. Utils. Comm'n v. District Court*, 181 Colo. 24, 506 P.2d 371 (1973).

Where an order of the commission is set aside, such order is from that time a nullity. *Denver & S. L. R. R. v. Chicago, B. & Q. R. R.*, 67 Colo. 155, 185 P. 817 (1919).

Presumption of regularity of commission's acts. There is express authority throughout the statute governing procedures before the public utilities commission for hearings to be conducted before the full commission, or before any one commissioner or any examiner of the commission. The presumption of reading and considering is merely one facet of the general presumption of regularity, which supports the official acts of public officers and, in the absence of clear evidence to the contrary, courts presume that they have properly discharged their official duties. *Pub. Utils. Comm'n v. District Court*, 163 Colo. 462, 431 P.2d 773 (1967); *Pub. Serv. Co. v. P.U.C.*, 765 P.2d 1015 (Colo. 1988).

Because of the presumption of regularity, the mere allegation that the commissioners did not consider the entire record is insufficient. Since the board has the right to rely upon information of its subordinates as to the evidence submitted, the allegation that the members of the board did not consider the evidence in arriving at the decision is insufficient to justify the court in granting relief. *Pub. Utils. Comm'n v. District Court*, 163 Colo. 462, 431 P.2d 773 (1967).

Courts will not set aside rate methodologies chosen by the commission unless they are inherently unsound and the commission is not bound by a previously utilized methodology when it has a reasonable basis for adopting a different one. *Bennett Bear Creek Farm Water Dist. v. City and County of Denver*, 928 P.2d 1254 (Colo. 1996); *CF&I Steel, L.P. v. Pub. Utils. Comm'n*, 949 P.2d 577 (Colo. 1997).

Decision as to weight to be placed on evidence is uniquely within province of P.U.C., and court will not substitute its judgment for that of the P.U.C. *RAM Broad. of Colo. v. P.U.C.*, 702 P.2d 746 (Colo. 1985).

Commissioner need not recite all evidence. The public utilities commission has not summarized all the evidence in the record. It has merely drawn from the whole evidence and presented as subsidiary findings the evidentiary facts upon which it has based its ultimate findings that specified provisions of the act were violated. It was not incumbent upon the commission to recite all the evidence, or all the undisputed evidence, or the evidence from which inferences opposed to its own might have been drawn. *Aspen Airways, Inc. v. Pub. Utils. Comm'n*, 169 Colo. 56, 453 P.2d 789 (1969).

This section does not authorize the P.U.C. to alter its decision which is the subject of the appeal by entering into a settlement agreement after the appellate review is commenced pursu-

ant to this section. *O'Bryant v. P.U.C.*, 778 P.2d 648 (Colo. 1989).

In light of generality of standards for judicial review found in subsection (3) of this section, a district court may look to the more specific guidelines for review found in § 24-4-106 (7) of the state Administrative Procedure Act. *Ace West Trucking v. P.U.C.*, 788 P.2d 755 (Colo. 1990); *Colo. Office of Consumer Counsel v. Mountain States Tel. and Tel. Co.*, 816 P.2d 278 (Colo. 1991).

Where provisions of public utilities law and state administrative procedure act conflict, the former governs. *Home Builders Ass'n v. P.U.C.*, 720 P.2d 552 (Colo. 1986).

IV. JURISDICTION.

The law fully provides that every order or decision made by the commission may be reviewed by the supreme court for the purpose of having the lawfulness of the order or revision determined. The mere fact that the general assembly provided for judicial review is indicative of its intention that the commission adhere strictly to the law. *Pub. Utils. Comm'n v. Colo. Motorway, Inc.*, 165 Colo. 1, 437 P.2d 44 (1968).

Not until reduced to final judgment by commission. Unless and until a matter before

the public utilities commission is reduced to final judgment, settling all the issues between the parties, the supreme court will not review it. *Pub. Utils. Comm'n v. Poudre Valley Rural Elec. Ass'n*, 173 Colo. 364, 480 P.2d 106 (1970).

The court first acquiring jurisdiction of the parties and the subject matter has exclusive jurisdiction. Since the action in the Denver district court was commenced prior to the Adams county action, exclusive jurisdiction rested with the Denver district court, where the action was properly brought according to statute. *Pub. Serv. Co. v. Miller*, 135 Colo. 575, 313 P.2d 998 (1957).

Procedures in this section provide exclusive method for initiating and obtaining judicial review of P.U.C. decisions and conflicting pleading requirements of C.R.C.P. 106 must yield to the statutory scheme. *Silver Eagle Servs. v. P.U.C.*, 768 P.2d 208 (Colo. 1989).

District court has jurisdiction to cure writ that substantially complies with this section. If an action to review a public utilities commission decision substantially complies with public utilities law and the defective pleading causes no prejudice, the action does not violate this section. *Trans Shuttle, Inc. v. Pub. Utils. Comm'n*, 58 P.3d 47 (Colo. 2002).

40-6-116. Suspension of decision - notice - bond - accounting pending review.

(1) The pendency of a writ of certiorari or review shall not of itself stay or suspend the operation of the decision of the commission; but, during the pendency of such writ, the district court, in its discretion, may stay or suspend, in whole or in part, the operation of the commission's decision.

(2) No order so staying or suspending any decision of the commission shall be made other than upon three days' notice and after hearing; and if the decision of the commission is suspended, the order suspending the same shall contain a specific finding based upon evidence submitted to the court and identified by reference thereto that great or irreparable damage would otherwise result to the petitioner and specifying the nature of the damage.

(3) In case the decision of the commission is stayed or suspended, the order of the court shall not become effective until a suspending bond has been filed with and approved by the district court, and sufficient in amount and security to insure the prompt payment, by the party petitioning for the review, of all damages caused by the delay in the enforcement of the decision of the commission, and of all moneys which any person may be compelled to pay, pending the review proceedings, for transportation, transmission, product, commodity, or service in excess of the charges fixed by the decision of the commission in case said decision is sustained. The district court, in case it stays or suspends the decision of the commission in any matter affecting rates, fares, tolls, rentals, charges, or classifications, by order, shall direct the public utility affected to pay into court from time to time, there to be impounded until the final decision of the case, or into some bank or trust company under such conditions as the court may prescribe all sums of money which it may collect from any person in excess of the sum such person would have been compelled to pay if the decision of the commission had not been stayed or suspended.

(4) In case the district court stays or suspends any decision lowering any rate, fare, toll, rental, charge, or classification, the commission, upon the filing and approval of said suspending bond, shall forthwith require the public utility affected, under penalty of the immediate enforcement of the decision of the commission, pending review and notwithstanding the suspending order, to keep such accounts, verified by oath, as may, in the

judgment of the commission, suffice to show the amounts being charged or received by such public utility, pending review, in excess of the charges allowed by the decision of the commission, together with the names and addresses of the persons to whom overcharges will be refundable in case the charges made by the public utility, pending review, are not sustained by the district court. The court, from time to time, may require the party petitioning for a review to give additional security on, or to increase, the suspending bond, whenever in the opinion of the court the same may be necessary to insure the prompt payment of said damages and said overcharges.

(5) Upon the final decision by the district court, all moneys which the public utility may have collected, pending the appeal, in excess of those authorized by such final decision, together with interest, in case the court ordered the deposits of such moneys in a bank or trust company, shall be promptly paid to the persons entitled thereto, in such manner and through such methods of distribution as may be prescribed by the commission. If any moneys are not claimed by the persons entitled thereto within one year from the final decision of the district court, the commission shall cause notice to such persons to be given by publication once a week for two successive weeks in a newspaper of general circulation printed and published in the city and county of Denver and in such other newspapers as may be designated by the commission, said notice to state the names of persons entitled to such moneys and the amounts due each person. All moneys not claimed within ninety days after publication of such notice shall be paid by the public utility, under the direction of the commission, into the state treasury and credited to the general fund.

Source: L. 13: p. 498, § 53. C.L. § 2962. CSA: C. 137, § 53. L. 45: p. 532, § 9. CRS 53: § 115-6-16. C.R.S. 1963: § 115-6-16. L. 69: p. 951, § 48. L. 75: (1) amended, p. 227, § 91, effective July 16.

ANNOTATION

Law reviews. For article, "Prosecuting an Appeal from a Decision of the Colorado Public Utilities Commission", see 16 Colo. Law. 2163 (1987).

When rate is approved by regulatory commission and is collected without suspension or bond, rate is not subject to refund. Mountain States Tel. & Tel. Co. v. Pub. Utils. Comm'n, 176 Colo. 457, 491 P.2d 582 (1972).

Court may, on review of commission order, require correction of legal errors in order and provide refunds to customers of utility notwithstanding approval by commission and lack of suspension or bond. Mountain States Tel. & Tel. Co. v. Pub. Utils. Comm'n, 176 Colo. 457, 491 P.2d 582 (1972).

This section, read as a whole, authorizes the district court to remand a case to the P.U.C. for determination of the manner and method of distribution of excess amounts charged by a public utility in a refund case. Atlantic Richfield v. District Court, 794 P.2d 253 (Colo. 1990).

The provisions of this section for suspension of an order of the commission is permissive only, and in no sense a requirement. The suspension if granted is equivalent to the allowance of a supersedeas in other cases. An aggrieved party is not deprived of the right of review by failure to apply for the suspension. Denver & S. L. R. R. v. Chicago, B. & Q. R. R., 67 Colo. 155, 185 P. 817 (1919).

40-6-117. Priority on court calendar. All actions and proceedings under this title, and all actions or proceedings to which the commission or the people of the state of Colorado may be parties, and in which any question arises under this title or under or concerning any decision of the commission, shall be preferred over all other civil causes except election causes and shall be heard and determined in preference to all other civil business except election causes, irrespective of position on the calendar. The same preference shall be granted upon application of the attorney general in any action or proceeding in which he may be allowed to intervene.

Source: L. 13: p. 500, § 54. C.L. § 2963. CSA: C. 137, § 54. CRS 53: § 115-6-17. C.R.S. 1963: § 115-6-17. L. 69: p. 952, § 49. L. 89: Entire section amended, p. 1533, § 18, effective April 12.

ANNOTATION

This section requires that actions for the review of commission decisions be preferred over all other actions except election causes. Mountain States Tel. & Tel. Co. v. Pub. Utils. Comm'n, 345 F. Supp. 80 (D. Colo. 1972).

There is no restriction in this section as to the kind of decision that can be reviewed. Mountain States Tel. & Tel. Co. v. Pub. Utils. Comm'n, 345 F. Supp. 80 (D. Colo. 1972).

40-6-118. Valuations - hearings - findings - review. (1) For the purpose of ascertaining the matters and things specified in section 40-4-110, concerning the value of the property of public utilities, the commission may cause a hearing to be held at such time and place as the commission may designate. Before any hearing is had, the commission shall give the public utility affected thereby at least thirty days' written notice, specifying the time and place of such hearing, and such notice shall be sufficient to authorize the commission to inquire into the matters designated in this section and pursuant to section 40-6-111, but this provision shall not prevent the commission from making any preliminary examination or investigation into the matters herein referred to or from inquiring into such matters in any other investigation or hearing. All public utilities affected shall be entitled to be heard and to introduce evidence at such hearing. The commission is empowered to resort to any other source of information available. The evidence introduced at such hearing shall be reduced to writing and certified under the seal of the commission. The commission shall make and file its findings of fact in writing upon all matters concerning which evidence has been introduced before it which in its judgment have bearing on the value of the property of the public utility affected. Such findings shall be subject to review by the district court in the same manner and within the same time as other orders and decisions of the commission.

(2) The findings of the commission so made and filed, when properly certified under the seal of the commission, shall be admissible in evidence in any action, proceeding, or hearing before the commission or any court, in which the commission, the state, or any officer, department, or institution thereof, or any county, city and county, municipality, or other body politic and the public utility affected may be interested, whether arising under the provisions of this title, or otherwise, and such findings, when so introduced, shall be conclusive evidence of the facts therein stated as of the date therein stated under conditions then existing, and such facts can only be controverted by showing a subsequent change in conditions bearing upon the facts therein determined. The commission, from time to time, may cause further hearings and investigations to be had for the purpose of making revaluations or ascertaining the value of any betterments, improvements, additions, or extensions made by any public utility subsequent to any prior hearing or investigation, and may examine into all matters which may change, modify, or affect any finding of fact previously made, and at such time may make findings of fact supplementary to those theretofore made. Such hearings shall be had upon the same notice and be conducted in the same manner, and the findings so made shall have the same force and effect as is provided for such original notice, hearing, and findings. Such findings made at such supplemental hearings or investigations shall be considered in connection with and as a part of the original findings except insofar as such supplemental findings shall change or modify the findings made at the original hearing or investigation.

Source: L. 13: p. 501, § 55. C.L. § 2964. CSA: C. 137, § 55. CRS 53: § 115-6-18. C.R.S. 1963: § 115-6-18. L. 69: p. 952, § 50. L. 89: (2) amended, p. 1533, § 19, effective April 12.

40-6-119. Excess charges - reparation - actions - limitation. (1) When complaint has been made to the commission concerning any rate, fare, toll, rental, or charge for any product or commodity furnished or service performed by any public utility and the commission has found, after investigation, that the public utility has charged an excessive or discriminatory amount for such product, commodity, or service, the commission may

order that the public utility make due reparation to the complainant therefor, with interest from the date of collection, provided no discrimination will result from such reparation.

(2) If the public utility does not comply with the order for the payment of reparation within the specified time in such order, suit may be instituted in any court of competent jurisdiction to recover the same. All complaints concerning excessive or discriminatory charges shall be filed with the commission within two years from the time the cause of action accrues, and the petition for the enforcement of the order shall be filed in the court within one year from the date of the order of the commission. The remedy provided in this section shall be cumulative and in addition to any other remedy in articles 1 to 7 of this title provided in case of failure of a public utility to obey the order or decision of the commission.

Source: L. 13: p. 502, § 56. C.L. § 2965. CSA: C. 137, § 56. CRS 53: § 115-6-19. C.R.S. 1963: § 115-6-19.

ANNOTATION

A railway company exacting an unreasonable charge for its service must make reparation to the extent of the excess. Bonfils v. Pub. Utils. Comm'n, 67 Colo. 563, 189 P. 775 (1920).

Tariff on file, if unreasonable, is no answer to the shipper's demand for reparation. Bonfils v. Pub. Utils. Comm'n, 67 Colo. 563, 189 P. 775 (1920).

Subsection (2) is to be so construed as to have a prospective effect only. Bonfils v. Pub. Utils. Comm'n, 67 Colo. 563, 189 P. 775 (1920).

This section does not apply to complaints by the PUC on its own motion, and the PUC has the authority to investigate and award reparations on its own motion pursuant to § 40-3-102. Peoples Natural Gas Div. v. Pub. Utils. Comm'n, 698 P.2d 255 (Colo. 1985).

40-6-120. Temporary authority. (Repealed)

Source: L. 69: p. 953, § 51. C.R.S. 1963: § 115-6-20. L. 79: (1) amended, p. 1516, § 1, effective June 19. L. 83: (1) amended, p. 1563, § 1, effective March 16. L. 87: (2) amended, p. 1475, § 1, effective February 26. L. 89: (3) amended, p. 1533, § 20, effective April 12. L. 93: (4) amended, p. 2066, § 22, effective July 1. L. 2011: Entire section repealed, (HB 11-1198), ch. 127, p. 416, § 3, effective August 10.

40-6-121. Computation of time. When the day for the performance of any act under this title, the effective date of any commission decision or order, the effective date of any administrative law judge's or commissioner's recommended decision, or the day upon which any document is required to be filed with the commission falls on any Saturday or Sunday, or on any day when the commission office is lawfully closed, the same shall be continued until 5 p.m. on the first full business day following such Saturday, Sunday, or day of lawful closing.

Source: L. 69: p. 954, § 51. C.R.S. 1963: § 115-6-21. L. 88: Entire section amended, p. 896, § 4, effective May 19. L. 89: Entire section amended, p. 1534, § 21, effective April 12. L. 95: Entire section amended, p. 199, § 14, effective April 13.

40-6-122. Ex parte communications - disclosure. (1) Commissioners and administrative law judges shall file memoranda, in accordance with this section, of all private communications to or from interested persons concerning matters under the commissioners' or judges' jurisdiction.

(2) For purposes of this section, "interested person" means any person or entity, or any agent or representative of a person or entity:

(a) Whose operations are within the jurisdiction of the commission; or

(b) Who has participated in a proceeding before the commission within one year prior to the communication; or

(c) Who anticipates participating in a proceeding before the commission within one year after the communication.

(3) Each memorandum filed pursuant to subsection (1) of this section shall set forth the time and place at which the communication was made, the persons who were present at that time and place, a statement of the subject matter of the communication, other than proprietary information, and a statement that the subject matter of the communication did not relate to any pending adjudicatory proceeding before the commission. It shall not be necessary for the memorandum to be prepared by the commissioner or judge, but it shall be signed or otherwise authenticated by the commissioner or judge, whose signature or authentication shall constitute a certificate by such commissioner or judge that the memorandum is complete and accurate. All such memoranda shall be filed with the director of the commission, who shall keep them on file and available for public inspection for a minimum of three years after their submission.

(4) Any public utility may request that the commission conduct a public meeting at which communications otherwise subject to this section may be made without the necessity of filing memoranda. The commission shall adopt reasonable rules and regulations to govern such requests. In addition, the commission may adopt such other rules as are necessary and proper to govern ex parte communications generally.

(5) As used in this section, an "adjudicatory proceeding" does not include a rule-making proceeding or discussions on pending legislative proposals.

Source: L. 93: Entire section added, p. 2066, § 23, effective July 1. **L. 2008:** (3) amended and (5) added, p. 1797, § 16, effective July 1.

ANNOTATION

Law reviews. For article, "To Talk or Not to Talk: Ex Parte Communications at the PUC", see 23 Colo. Law. 2093 (1994).

40-6-123. Standards of conduct. (1) Members and staff of the commission shall conduct themselves in such a manner as to ensure fairness in the discharge of the duties of the commission, to provide equitable treatment of the public, utilities, and other parties, to maintain public confidence in the integrity of the commission's actions, and to prevent the appearance of impropriety or of conflict of interest. The standards set forth in this section apply at all times to the commissioners, to their staff, including administrative law judges, and to parties under contract with the commission for state business.

(2) The commissioners, staff who act in an advisory capacity to the commissioners, and administrative law judges shall refrain from financial, business, and social dealings that adversely affect their impartiality or interfere with the proper performance of their official duties.

(3) Neither commissioners, staff members, parties under contract for state work, or members of the immediate families of such persons shall request or accept any gift, bequest, or loan from persons who appear before the commission; except that commissioners and staff members may participate in meetings, conferences, or educational programs which are open to other persons.

(4) Commissioners shall not lend the prestige of their office to advance the private interests of others, nor shall they convey the impression that special influence can be brought to bear upon them.

(5) Commissioners and presiding administrative law judges shall not own any stock, securities, or other financial interest in any company regulated by the commission.

(6) Violation of this section by a commissioner shall be grounds for the immediate removal of such commissioner by the governor.

Source: L. 93: Entire section added, p. 2066, § 23, effective July 1.

40-6-124. Disqualification. (1) Commissioners and presiding administrative law judges shall disqualify themselves in any proceeding in which their impartiality may reasonably be questioned, including, but not limited to, instances in which they:

- (a) Have a personal bias or prejudice concerning a party;
- (b) Have served as an attorney or other representative of any party concerning the matter at issue, or were previously associated with an attorney who served, during such association, as an attorney or other representative of any party concerning the matter at issue;
- (c) Know that they or any member of their family, individually or as a fiduciary, has a financial interest in the subject matter at issue, is a party to the proceeding, or otherwise has any interest that could be substantially affected by the outcome of the proceeding; or
- (d) Have engaged in conduct which conflicts with their duty to avoid the appearance of impropriety or of conflict of interest.

Source: L. 93: Entire section added, p. 2066, § 23, effective July 1.

ARTICLE 6.5

Office of Consumer Counsel

40-6.5-101.	Definitions.	40-6.5-105.	Intervenors other than the office of consumer counsel.
40-6.5-102.	Office of consumer counsel - creation - appointment - attorney general to represent.	40-6.5-106.	Powers of consumer counsel.
		40-6.5-107.	Financing of office.
40-6.5-103.	Qualifications - conflict of interest.	40-6.5-108.	Office of consumer counsel and utility consumers' board subject to termination.
40-6.5-104.	Representation by consumer counsel.	40-6.5-109.	Consumer counsel report. (Repealed)

40-6.5-101. Definitions. As used in this article, unless the context otherwise requires:

- (1) "Agricultural consumer" means a public utility customer whose utility service is classified as an agricultural user or an irrigation user pursuant to a utility tariff established by the commission or a public utility customer who is seeking such tariff status.
- (2) "Commission" means the public utilities commission created in article 2 of this title.
- (3) "Public utility" means an electric utility, gas utility, or telephone utility.
- (4) "Residential consumer" means a public utility customer whose utility service is limited to his residence.
- (5) "Small business consumer" means a public utility customer whose utility service is classified as a small business user or a small commercial user pursuant to a utility tariff established by the commission or a public utility customer who is seeking such tariff status.

Source: L. 84: Entire article added, p. 1044, § 1, effective July 1.

40-6.5-102. Office of consumer counsel - creation - appointment - attorney general to represent. (1) There is hereby created, as a division within the department of regulatory agencies, the office of consumer counsel, the head of which shall be the consumer counsel, who shall be appointed by the executive director of the department of regulatory agencies pursuant to section 13 of article XII of the state constitution.

(2) (a) The office of consumer counsel shall exercise its powers and perform its duties and functions specified in this article under the department of regulatory agencies as if the same were transferred to the department by a **type 1** transfer, as such transfer is defined in the "Administrative Organization Act of 1968", article 1 of title 24, C.R.S.

(b) (I) On July 1, 1993, all employees of the office of consumer counsel, except for those employees who are attorneys at law serving as assistant attorneys general or support staff to such attorneys, whose principal duties are concerned with the duties and functions

transferred to the office of consumer counsel in the department of regulatory agencies pursuant to paragraph (a) of this subsection (2) and whose employment in the office of consumer counsel is deemed necessary by the executive director of the department of regulatory agencies to carry out the purposes of this article shall be transferred to the office of consumer counsel in the department of regulatory agencies and shall become employees thereof. Such employees shall retain all rights to the state personnel system and retirement benefits under the laws of this state, and their services shall be deemed to have been continuous. All transfers and any abolishment of positions in the state personnel system shall be made and processed in accordance with the state personnel system laws and rules and regulations.

(II) On July 1, 1993, all items of property, real and personal, including office furniture and fixtures, books, documents, and records of the office of consumer counsel pertaining to the duties and functions transferred to the office of consumer counsel in the department of regulatory agencies pursuant to paragraph (a) of this subsection (2) are transferred to the office of consumer counsel in the department of regulatory agencies and shall become the property thereof.

(3) (a) The office of consumer counsel shall be under the policy guidance of the utility consumers' board, which board is hereby created. The board shall exercise its powers and perform its duties and functions specified in this article under the department of regulatory agencies and the executive director thereof as if the same were transferred to the department by a **type 1** transfer, as such transfer is defined in the "Administrative Organization Act of 1968", article 1 of title 24, C.R.S.

(b) The board shall consist of eleven members appointed by the governor. Such members shall be appointed to represent residential, small business, and agricultural utility consumers. Such members shall, to the extent possible, be persons with expertise or experience in consumer related utility matters, utilities management, economics, accounting, financing, engineering, planning, or utilities law. In making appointments to the board, the governor shall ensure that the membership of the board represents the different geographic areas of the state. Of the members of the board appointed for terms beginning July 1, 1993, five of such members shall be appointed for terms of two years and six shall be appointed for terms of four years. Thereafter, members of the board shall be appointed for terms of four years. The governor shall not appoint any member of the board if such person has any conflict of interest with such person's duties as a member of the board. The governor may remove any board member for misconduct, incompetence, or neglect of duty. Board members shall serve without compensation, but members who reside outside the counties of Denver, Jefferson, Adams, Arapahoe, Boulder, and Douglas shall be entitled to reimbursement for reasonable actual expenses to attend board meetings in Denver. The board shall meet at least six times per year.

(c) It is the duty of the board to represent the public interest of Colorado utility users and, specifically, the interests of residential, agricultural, and small business users, by providing general policy guidance and oversight for the office of consumer counsel and the consumer counsel in the performance of their statutory duties and responsibilities as specified in this article. The powers and duties of the board shall include, but not be limited to, the following:

(I) Providing general policy guidance to the office of consumer counsel regarding rule-making matters, legislative projects, general activities, and priorities of the office;

(II) Gathering data and information and formulating policy positions to advise the office of consumer counsel in preparing analysis and testimony in legislative hearings on proposed legislation affecting the interests of residential, small business, and agricultural utility users;

(III) Reviewing the performance of the office of consumer counsel annually;

(IV) Conferring with the executive director of the department of regulatory agencies on the hiring of the consumer counsel and consulting with such executive director on the annual performance evaluation of the office of consumer counsel and the consumer counsel.

(4) It is the duty of the attorney general to advise the office of consumer counsel and the board in all legal matters and to provide representation in proceedings in which the office of consumer counsel participates.

Source: **L. 84:** Entire article added, p. 1045, § 1, effective July 1. **L. 93:** Entire section amended, p. 979, § 4, effective July 1. **L. 96:** (3)(c)(III) amended, p. 1225, § 33, effective August 7.

Cross references: For the legislative declaration contained in the 1996 act amending subsection (3)(c)(III), see section 1 of chapter 237, Session Laws of Colorado 1996.

40-6.5-103. Qualifications - conflict of interest. The consumer counsel shall have at least five years of experience in consumer related utility issues or in the operation, management, or regulation of utilities as either an attorney, an engineer, an economist, an accountant, a financial analyst, or an administrator or any combination thereof. No person owning stocks or bonds in a corporation subject in whole or in part to regulation by the commission or who has any pecuniary interest in such corporation shall be appointed as consumer counsel.

Source: **L. 84:** Entire article added, p. 1045, § 1, effective July 1.

40-6.5-104. Representation by consumer counsel. (1) The consumer counsel shall represent the public interest and, to the extent consistent therewith, the specific interests of residential consumers, agricultural consumers, and small business consumers by appearing in proceedings before the commission and appeals therefrom in matters which involve proposed changes in a public utility's rates and charges, in matters involving rule-making which have an impact on the charges, the provision of services, or the rates to consumers, and in matters which involve certificates of public convenience and necessity for facilities employed in the provision of utility service, the construction of which would have a material effect on the utility's rates and charges.

(2) In exercising his discretion whether or not to appear in a proceeding, the consumer counsel shall consider the importance and the extent of the public interest involved. In evaluating the public interest, the consumer counsel shall give due consideration to the short- and long-term impact of the proceedings upon various classes of consumers, so as not to jeopardize the interest of one class in an action by another. If the consumer counsel determines that there may be inconsistent interests among the various classes of the consumers he represents in a particular matter, he may choose to represent one of the interests or to represent no interest. Nothing in this section shall be construed to limit the right of any person, firm, or corporation to petition or make complaint to the commission or otherwise intervene in proceedings or other matters before the commission.

(3) The consumer counsel shall be served with notices of all proposed gas, electric, and telephone tariffs, and he shall be served with copies of all orders of the commission affecting the charges of agricultural consumers, residential consumers, and small business consumers.

Source: **L. 84:** Entire article added, p. 1045, § 1, effective July 1.

40-6.5-105. Intervenors other than the office of consumer counsel. (1) If the office of consumer counsel intervenes and there are other intervenors in proceedings before the commission, the determination of said commission with regard to the payment of expenses of intervenors, other than the office of consumer counsel, and the amounts thereof shall be based on the following considerations:

(a) Any reimbursements may be awarded only for expenses related to issues not substantially addressed by the office of consumer counsel;

(b) The testimony and participation of other intervenors must have addressed issues of concern to the general body of users or consumers concerning, directly or indirectly, rates or charges;

(c) The testimony and participation of other intervenors must have materially assisted the commission in rendering its decision;

(d) The expenses of other intervenors must be reasonable in amount;

- (e) The testimony and participation of other intervenors must be of significant quality;
 - (f) The participation of other intervenors must be active during the proceeding and not merely an appearance for purposes of establishing legal standing; and
 - (g) The payment of expenses of other intervenors who are in direct competition with a public utility involved in proceedings before the commission is prohibited.
- (2) The commission shall promptly report the award of any intervenors' expenses to the executive director of the department of regulatory agencies.

Source: L. 84: Entire article added, p. 1045, § 1, effective July 1. L. 96: (2) amended, p. 1228, § 43, effective August 7.

Cross references: For the legislative declaration contained in the 1996 act amending subsection (2), see section 1 of chapter 237, Session Laws of Colorado 1996.

40-6.5-106. Powers of consumer counsel. (1) The consumer counsel:

- (a) May employ such attorneys, engineers, economists, accountants, or other employees as may be necessary to carry out his duties and shall employ a maximum of sixteen full-time employees or the equivalent thereof;
 - (b) Shall be granted, by the commission, leave to intervene in all cases where such request is made in conformance with rules of the commission;
 - (c) May contract for the services of technically qualified persons to perform research and to appear as expert witnesses before the commission, such persons to be paid from funds appropriated for the use of the consumer counsel;
 - (d) May have access to the files of the commission when conducting research.
- (2) The consumer counsel may petition for, request, initiate, and appear and intervene as a party in any proceeding before the commission concerning rate changes, rule-making, charges, tariffs, modifications of service, and matters involving certificates of public convenience and necessity. Notwithstanding any provision of this article to the contrary, the consumer counsel shall not be a party to any individual complaint between a utility and an individual.

(2.5) The consumer counsel may petition for, request, initiate, or seek to intervene in any proceeding before a federal agency which regulates utility rates or service, or federal court when the matter before such agency or court will affect a rate, charge, tariff, or term of service for a utility product or service for a residential, small business, or agricultural utility consumer in the state of Colorado. The phrase "federal agency which regulates utility rates or service" does not include any federal lending agency.

(3) (a) The consumer counsel and any member of his or her staff directly involved in a specific adjudicatory proceeding before the commission shall refrain from ex parte communications with members of the commission. The counsel or his or her staff shall have all rights and be governed by the same ex parte rules as all other intervenors.

(b) As used in this subsection (3), an "adjudicatory proceeding" does not include a rule-making proceeding or discussions on pending legislative proposals.

Source: L. 84: Entire article added, p. 1046, § 1, effective July 1. L. 92: (2.5) added, p. 2128, § 1, effective April 10. L. 2008: (3) amended, p. 1797, § 17, effective July 1.

40-6.5-107. Financing of office. At each regular session, the general assembly shall determine the amounts to be expended by the office of consumer counsel for the direct and indirect costs of administration in performing its duties and responsibilities required by this article and shall appropriate to the office of consumer counsel from the public utilities commission fixed utility fund created in section 40-2-114 the full amount so determined. No general fund moneys shall be appropriated to the office of consumer counsel for the performance of its duties and responsibilities under this article.

Source: L. 84: Entire article added, p. 1047, § 1, effective July 1.

40-6.5-108. Office of consumer counsel and utility consumers' board subject to termination. (1) Unless continued by the general assembly:
 (a) (Deleted by revision.)
 (b) Repealed.
 (b.5) The utility consumers' board shall terminate on July 1, 2015.
 (c) The office of consumer counsel shall terminate on July 1, 2015.
 (2) The provisions of section 24-34-104, C.R.S., concerning the termination schedule for regulatory bodies of the state unless extended as provided in that section, are applicable to the office of consumer counsel and the utility consumers' board.

Source: **L. 84:** Entire article added, p. 1047, § 1, effective July 1. **L. 88:** Entire section amended, p. 1353, § 1, effective April 14. **L. 93:** Entire section amended, p. 977, § 5, effective July 1. **L. 98:** (1) amended, p. 74, § 1, effective July 1; (1) amended, p. 78, § 1, effective July 1. **L. 2004:** (1)(b) amended, p. 350, § 21, effective July 1. **L. 2006:** (1)(b) repealed and (1)(b.5) added, p. 128, §§ 2, 3, effective July 1; (1)(b) repealed and (1)(c) added, p. 24, §§ 2, 3, effective July 1.

Editor's note: Amendments to subsection (1) by House Bill 98-1078 were harmonized with House Bill 98-1074 resulting in the deletion of subsection (1) (a).

40-6.5-109. Consumer counsel report. (Repealed)

Source: **L. 84:** Entire article added, p. 1048, § 6, effective July 1. **L. 93:** Entire section repealed, p. 1793, § 90, effective June 6; entire section repealed, pp. 977, 2068, §§ 6, 24, effective July 1.

ARTICLE 7

Enforcement - Penalties

40-7-101.	Enforcement of laws.	40-7-112.	Applicability of civil penalties.
40-7-102.	Liability for violations - punitive damages.	40-7-113.	Civil penalties - fines.
40-7-103.	Not to affect other rights - penalties cumulative.	40-7-113.5.	Civil penalties applicable to public utilities - exclusion from rate base.
40-7-104.	Actions to restrain violations.	40-7-114.	Applicability of civil penalties to owners, employers, or other persons. (Repealed)
40-7-105.	Violations - penalty - separate offenses.	40-7-115.	Each day a separate offense.
40-7-106.	Violations by agents - penalty.	40-7-116.	Enforcement of civil penalties against carriers.
40-7-107.	Violations by corporations not public utilities - penalty.	40-7-116.5.	Enforcement of civil penalties against public utilities.
40-7-108.	Violations by individuals - penalty.	40-7-117.	Gas pipeline safety rules - civil penalty for violations - compromise - other remedies.
40-7-109.	Action to recover penalties - fines paid to general fund.		
40-7-110.	Commission to represent people - when.		
40-7-111.	Not to affect interstate or foreign commerce.		

40-7-101. Enforcement of laws. It is the duty of the commission to see that the constitution and statutes of this state affecting public utilities, and persons subject to article 10.1 or 10.5 of this title, the enforcement of which is not specifically vested in some other officer or tribunal, are enforced and obeyed and that violations thereof are promptly prosecuted and penalties due the state are recovered and collected, and to this end it may sue in the name of the people of the state of Colorado. Upon the request of the commission, the attorney general or the district attorney acting for the proper county or city and county shall aid in any investigation, hearing, or trial had under articles 1 to 7 of this title and

institute and prosecute actions or proceedings for the enforcement of the constitution and statutes of this state affecting public utilities and persons subject to article 10.1 or 10.5 of this title and for the punishment of all violations thereof.

Source: L. 13: p. 503, § 57. C.L. § 2966. CSA: C. 137, § 57. CRS 53: § 115-7-1. C.R.S. 1963: § 115-7-1. L. 2011: Entire section amended, (HB 11-1198), ch. 127, p. 420, § 16, effective August 10.

ANNOTATION

Law reviews. For article, "Trying to Get the P.U.C. to Let You Run a Truck", see 7 Dicta 4 (Oct. 1930).

Commission is empowered to fashion remedy to correct a statutory violation of the requirement that a utility receive commission approval prior to the transfer of utility's assets. *Mountain States Telephone & Telegraph v. P.U.C.*, 763 P.2d 1020 (Colo. 1988).

Order directing utility to reacquire assets transferred without required commission approval was appropriate and will be given great deference in light of the commission's special expertise in regulation of utilities. *Mountain States Telephone & Telegraph v. P.U.C.*, 763 P.2d 1020 (Colo. 1988).

Broad powers under color of state law. Public utilities, even though privately financed and owned, operating pursuant to the regulation of the commission, are granted existence by virtue of state law, and thereafter carry on business under color of state law. *Denver Welfare*

Rights Org. v. Pub. Utils. Comm'n, 190 Colo. 329, 547 P.2d 239 (1976).

The right of a utility customer to receive service is not an absolute right, but is a qualified right. The right is dependent upon payment for the service and product provided. The continuation of service during a dispute is dependent upon either the posting of what is, in effect, an indemnity bond or the assertion of a well-founded claim that would justify the customer's refusal to pay for the service which was rendered. *Denver Welfare Rights Org. v. Pub. Utils. Comm'n*, 190 Colo. 329, 547 P.2d 239 (1976).

Situation in which commission may not interfere with enforcement. This section does not give the commission the right to interfere with the enforcement of public utility regulations when such powers are specifically vested in some other officer or tribunal. *City of Englewood v. City & County of Denver*, 123 Colo. 290, 229 P.2d 667 (1951).

40-7-102. Liability for violations - punitive damages. (1) In case any public utility does, causes to be done, or permits to be done any act, matter, or thing prohibited, forbidden, or declared to be unlawful, or omits to do any act, matter, or thing required to be done, either by the state constitution, any law of this state, or any order or decision of the commission, such public utility shall be liable to the persons or corporations affected thereby for all loss, damage, or injury caused thereby or resulting therefrom. If the court finds that the act or omission was willful, the court, in addition to the actual damages, may award exemplary damages. An action to recover such loss, damage, or injury may be brought in any court of competent jurisdiction by any corporation or person.

(2) No recovery as provided in this section shall in any manner affect the recovery by the state of the penalties provided in articles 1 to 7 of this title.

Source: L. 13: p. 503, § 58. C.L. § 2967. CSA: C. 137, § 58. CRS 53: § 115-7-2. C.R.S. 1963: § 115-7-2.

ANNOTATION

Liability of public utility. In case any public utility shall do any act that is prohibited, such public utility shall be liable to the persons affected thereby for all loss, damages, or injury caused thereby or resulting therefrom. *Miller v. Bussard*, 132 Colo. 478, 289 P.2d 913 (1955).

Subsection (1) creates a private cause of action to compensate with money damages the injury of any person caused by conduct of a regulated utility that violates state law or any

public utilities commission order or decision. *Fawn Lake Ranch Co. v. K.C. Elec. Ass'n*, 700 P.2d 564 (Colo. App. 1985); *City of Boulder v. Pub. Serv. Co. of Colo.*, 996 P.2d 198 (Colo. App. 1999).

Trial court lacked subject matter jurisdiction where action concerned the defendant utility's tariff rates and plaintiffs had not yet exhausted their administrative remedies by seeking review of such rates. *City of Boulder v.*

Pub. Serv. Co. of Colo., 996 P.2d 198 (Colo. App. 1999).

Phrase "may be brought in any court of competent jurisdiction" in subsection (1) does not create subject matter jurisdiction in the absence of exhaustion of administrative remedies. City of Boulder v. Pub. Serv. Co. of Colo., 996 P.2d 198 (Colo. App. 1999).

A plaintiff's failure to exhaust its administrative remedies mandates dismissal of a deceptive trade practice claim concerning a utility's alleged misrepresentations about the heating content of natural gas because the commission explicitly considers the heating content of natural gas when setting rates, and thus the claim is within the commission's exclusive jurisdiction. City of Aspen v. Kinder Morgan, Inc., 143 P.3d 1076 (Colo. App. 2006).

Although the rule is that damages based upon mere speculation and conjecture are not allowable, where it has been definitely established that damages are traceable to and the direct result of a wrong, the uncertainty as to the amount thereof is a question for determination by the trier of the facts. Any other rule would

result in rewarding a wrongdoer. Donahue v. Pikes Peak Auto Co., 150 Colo. 281, 372 P.2d 443 (1962).

Where the cause of the damage is established, the fact that the amount or extent of damages is uncertain is no objection. Donahue v. Pikes Peak Auto Co., 150 Colo. 281, 372 P.2d 443 (1962).

Statute imposes no requirement that an affected person or corporation also have standing to pursue the underlying administrative remedy, and therefore a former landowner had standing to bring suit against utility for failure to provide service to purchaser of land. Fawn Lake Ranch Co. v. K.C. Elec. Ass'n, 700 P.2d 564 (Colo. App. 1985).

By the enactment of this section and § 40-10-115, the state has exercised legislative jurisdiction as to certain conduct in the state. Hansemen v. Hamilton, 176 F. Supp. 371 (D. Colo. 1959).

Applied in Shoemaker v. Mountain States Tel. & Tel. Co., 38 Colo. App. 321, 559 P.2d 721 (1976).

40-7-103. Not to affect other rights - penalties cumulative. (1) The provisions of articles 1 to 7 of this title shall not have the effect of releasing or waiving any right of action by the state, the commission, or any person or corporation for any right, penalty, or forfeiture which may have arisen or accrued under any law of this state.

(2) All penalties accruing under articles 1 to 7 of this title shall be cumulative of each other, and a suit for the recovery of one penalty shall not be a bar to nor affect the recovery of any other penalty or forfeiture nor be a bar to any criminal prosecution against any public utility, or any officer, director, agent, or employee thereof, or any other corporation or person.

Source: L. 13: p. 503, § 59. C.L. § 2968. CSA: C. 137, § 59. CRS 53: § 115-7-3. C.R.S. 1963: § 115-7-3.

40-7-104. Actions to restrain violations. (1) Whenever the commission is of the opinion that any public utility is failing or omitting to do anything required of it by law or by any order, decision, rule, direction, or requirement of the commission or is doing anything or about to do anything or permitting anything or about to permit anything to be done contrary to or in violation of law or of any order, decision, rule, direction, or requirement of the commission, it shall direct the attorney general to commence an action or proceeding in the district court in and for the county or city and county in which the cause or some part thereof arose, or in which the corporation or person complained of, if any, has its principal place of business, or in which the person, if any, complained of, resides, in the name of the people of the state of Colorado, for the purpose of having such violations or threatened violations stopped and prevented, either by mandamus or injunction.

(2) The attorney general shall begin such action or proceeding by petition to such district court, alleging the violation or threatened violation complained of, and praying for appropriate relief by way of mandamus or injunction. It is the duty of the court to specify a time, not exceeding twenty days after the service of the copy of the petition, within which the public utility complained of must answer the petition, and in the meantime said public utility may be restrained. In case of default in answer or after answer, the court shall immediately inquire into the facts and circumstances of the case.

(3) Such corporations or persons as the court may deem necessary or proper to be joined as parties, in order to make its judgment or order effective, may be joined as parties.

The final judgment in any such action or proceeding shall either dismiss the action or proceeding or direct that an order in the nature of mandamus or injunction issue or be made permanent as prayed for in the petition or in such modified or other form as will afford appropriate relief. An appeal may be taken to the supreme court from such final judgment in the same manner and with the same effect, subject to the provisions of articles 1 to 7 of this title as appeals are taken from judgments of the district court in other actions for mandamus or injunction.

Source: L. 13: p. 504, § 60. C.L. § 2969. CSA: C. 137, § 60. CRS 53: § 115-7-4. C.R.S. 1963: § 115-7-4.

ANNOTATION

This section relates to and concerns the enforcement of orders, decisions, and rules of the commission when the commission seeks enforcement of its pronouncements. *Eveready Freight Serv., Inc. v. Pub. Utils. Comm'n*, 131 Colo. 172, 280 P.2d 442 (1955).

Section applies when enforcement of commission order becomes matter of judicial determination. Certainly the general assembly did not by this section contemplate that every al-

leged violation of the terms of a certificate of public convenience and necessity had to be heard in a court of record. The commission has inherent power to investigate alleged violations and to make its orders subject to review as provided by law. Enforcement of its orders may become a matter for judicial determination in which event this section applies. *Eveready Freight Serv., Inc. v. Pub. Utils. Comm'n*, 131 Colo. 172, 280 P.2d 442 (1955).

40-7-105. Violations - penalty - separate offenses. (1) Any public utility which violates or fails to comply with any provision of the state constitution or of articles 1 to 7 of this title or which fails, omits, or neglects to obey, observe, or comply with any order, decision, decree, rule, direction, demand, or requirement of the commission or any part or provision thereof, except an order for the payment of money, in a case in which a penalty has not been provided for such public utility, is subject to a penalty of not more than two thousand dollars for each offense.

(2) Every violation of the provisions of articles 1 to 7 of this title or of any order, decision, decree, rule, direction, demand, or requirement of the commission or any part or portion thereof, except an order for the payment of money, by any corporation or person is a separate and distinct offense, and, in case of a continuing violation, each day's continuance thereof shall be deemed a separate and distinct offense.

(3) In construing and enforcing the provisions of articles 1 to 7 of this title relating to penalties, the act, omission, or failure of any officer, agent, or employee of any public utility, acting within the scope of his official duties or employment, in every case shall be deemed the act, omission, or failure of such public utility.

Source: L. 13: p. 505, § 61. C.L. § 2970. CSA: C. 137, § 61. CRS 53: § 115-7-5. C.R.S. 1963: § 115-7-5.

ANNOTATION

Law reviews. For article, "Coal Mining a Public Utility", see 12 *Dicta* 267 (1935).

Function of commission. The public utilities commission is not a court. It is charged with the performance of certain executive and administrative duties. In the performance thereof, and as incidental thereto, it hears evidence, ascertains facts, and exercises judgment and discretion, but

this is the exercise of merely a quasi-judicial function, not the exercise of judicial power within the meaning of the constitution. *People ex rel. Hubbard v. Colo. Title & Trust Co.*, 65 Colo. 472, 178 P. 6 (1918); *Clark v. Denver & I. R. R.*, 78 Colo. 48, 239 P. 20 (1925); *People v. Swena*, 88 Colo. 337, 296 P. 271 (1931).

40-7-106. Violations by agents - penalty. Every officer, agent, or employee of any public utility who violates or fails to comply with or who procures, aids, or abets any violation by any public utility of any provision of the constitution of this state or of articles

1 to 7 of this title, or who fails to obey, observe, or comply with any order, decision, rule, direction, demand, or requirement of the commission or any part or provision thereof, except an order for the payment of money, or who procures, aids, or abets any public utility in its failure to obey, observe, and comply with any such order, decision, rule, direction, demand, or requirement or any part or provision thereof in a case in which a penalty has not been provided for such officer, agent, or employee commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

Source: L. 13: p. 505, § 62. C.L. § 2971. CSA: C. 137, § 62. CRS 53: § 115-7-6. C.R.S. 1963: § 115-7-6. L. 93: Entire section amended, p. 2068, § 25, effective July 1. L. 2002: Entire section amended, p. 1558, § 355, effective October 1.

Cross references: For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

40-7-107. Violations by corporations not public utilities - penalty. Every corporation other than a public utility which violates any provision of articles 1 to 7 of this title or which fails to obey, observe, or comply with any order, decision, rule, direction, demand, or requirement of the commission or any part or provision thereof, except an order for the payment of money, in a case in which a penalty has not been provided for such corporation is subject to a penalty of not more than two thousand dollars for each offense.

Source: L. 13: p. 506, § 63. C.L. § 2972. CSA: C. 137, § 63. CRS 53: § 115-7-7. C.R.S. 1963: § 115-7-7.

40-7-108. Violations by individuals - penalty. Every person who, either individually or acting as an officer, agent, or employee of a corporation other than a public utility, violates any provision of articles 1 to 7 of this title or who fails to observe, obey, or comply with any order, decision, rule, direction, demand, or requirement of the commission or any part or portion thereof, or who procures, aids, or abets any such public utility in its violation of articles 1 to 7 of this title or in its failure to obey, observe, or comply with any such order, decision, rule, direction, demand, or requirement or any part or portion thereof in a case in which a penalty has not been provided for such person commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

Source: L. 13: p. 506, § 64. C.L. § 2973. CSA: C. 137, § 64. CRS 53: § 115-7-8. C.R.S. 1963: § 115-7-8. L. 93: Entire section amended, p. 2068, § 26, effective July 1. L. 2002: Entire section amended, p. 1558, § 356, effective October 1.

Cross references: For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

40-7-109. Action to recover penalties - fines paid to general fund. Actions to recover penalties under this title may be brought in the name of the people of the state of Colorado in the district court in and for the county or city and county in which the cause or some part thereof arose, or in which the corporation complained of, if any, has its principal place of business, or in which the person, if any, complained of resides. Such action shall be commenced and prosecuted to final judgment by the attorney general as directed by the commission. In any such action, all penalties incurred up to the time of commencing the same may be sued for and recovered. In all such actions, the procedure and rules of evidence shall be the same as in ordinary civil actions, except as otherwise provided in this article. All fines and penalties recovered by the state in any such action, together with the costs thereof, shall be paid into the state treasury. Any such action may be compromised or discontinued on application of the commission upon such terms as the court shall approve and order.

Source: L. 13: p. 506, § 65. C.L. § 2974. CSA: C. 137, § 65. CRS 53: § 115-7-9. C.R.S. 1963: § 115-7-9. L. 2008: Entire section amended, p. 1797, § 18, effective July 1.

40-7-110. Commission to represent people - when.

(1) Repealed.

(2) The commission has the power to appear and represent the interests and welfare of the people of the state of Colorado in all matters and proceedings involving any public utility or carrier pending before any officer, department, board, commission, or court of the United States, of any other state, or of this state and to intervene in, protest, resist, or advocate the granting or denial of any petition, application, complaint, or other proceeding, to examine witnesses and offer evidence in any proceeding affecting the people of this state or some portion thereof, as the public interest, convenience, or necessity may appear, and to initiate or participate in judicial proceedings involving the order or decision of any such officer, department, board, or commission.

Source: L. 13: p. 507, § 66. C.L. § 2975. CSA: C. 137, § 66. L. 45: p. 534, § 10. CRS 53: § 115-7-10. C.R.S. 1963: § 115-7-10. L. 2008: (1) repealed, p. 1798, § 19, effective July 1.

40-7-111. Not to affect interstate or foreign commerce. None of the provisions of articles 1 to 7 of this title, except when specifically so stated, shall apply or be construed to apply to commerce with foreign nations or commerce among the several states, except insofar as the same may be permitted under the provisions of the constitution of the United States and the acts of congress.

Source: L. 13: p. 508, § 68. C.L. § 2976. CSA: C. 137, § 67. CRS 53: § 115-7-11. C.R.S. 1963: § 115-7-11.

ANNOTATION

Applied in *City & County of Denver v. Mountain States Tel. & Tel. Co.*, 67 Colo. 225, 184 P. 604 (1919); *Western Transp. Co. v. People*, 82 Colo. 456, 261 P. 1 (1927).

40-7-112. Applicability of civil penalties. (1) A person who operates or offers to operate as a motor carrier as defined in section 40-10.1-101 or a motor carrier, motor private carrier, broker, freight forwarder, leasing company, or other person required to register under section 40-10.5-102 is subject to civil penalties as provided in this section and sections 40-7-113 to 40-7-116, which shall be paid and credited to the general fund, in addition to any other sanctions that may be imposed pursuant to law.

(2) Subsections (3) to (5) of this section and the civil penalties provided in section 40-7-113 do not apply to persons transporting nuclear materials who commit violations of section 42-20-406 (3), 42-20-407, or 42-20-505, C.R.S., or to persons transporting hazardous materials who commit violations of section 42-20-204, C.R.S.

(3) An owner or other person allowing a driver to operate a motor vehicle upon a highway in violation of a statute or rule for which a civil penalty may be imposed under section 40-7-113 (1) is subject to the civil penalties provided in section 40-7-113 if he or she knows or has reason to know that the driver is engaged in a violation.

(4) An owner or other person who directs a driver to operate a motor vehicle upon a highway in violation of a statute or rule for which a civil penalty may be imposed under section 40-7-113 (1) is subject to the civil penalties provided in section 40-7-113.

(5) Any civil penalty assessed against an owner or other person pursuant to subsection (3) or (4) of this section is in addition to, and not in lieu of, any civil penalty against the actual driver of the vehicle, and any such penalty may be assessed upon the initial violation by the person.

Source: L. 89: Entire section added, p. 1540, § 1, effective April 12. L. 93: (2) amended, p. 1623, § 3, effective June 6. L. 94: (2) amended, p. 2570, § 94, effective

January 1, 1995. **L. 95:** (1) amended, p. 1209, § 23, effective May 31. **L. 98:** (1) amended, p. 1058, § 5, effective July 1. **L. 2003:** (1) amended, p. 2380, § 3, effective August 6. **L. 2005:** (1) amended, p. 782, § 74, effective June 1. **L. 2006:** (1) amended, p. 1095, § 7, effective August 7. **L. 2009:** (1) amended, (SB 09-292), ch. 369, p. 1982, § 120, effective August 5. **L. 2011:** Entire section amended, (HB 11-1198), ch. 127, p. 420, § 17, effective August 10.

40-7-113. Civil penalties - fines. (1) In addition to any other penalty otherwise authorized by law and except as otherwise provided in subsections (3) and (4) of this section, any person who violates article 10.1 or 10.5 of this title or any rule promulgated by the commission pursuant to such articles, which article or rule is applicable to the person, may be subject to fines as specified in the following paragraphs:

(a) Any person who fails to carry the insurance required by law may be assessed a civil penalty of not more than eleven thousand dollars.

(b) Any person who violates section 40-10.1-201 (1), 40-10.1-202 (1) (a), 40-10.1-302 (1) (a), 40-10.1-401 (1) (a), or 40-10.1-502 (1) (a) may be assessed a civil penalty of not more than one thousand one hundred dollars.

(c) and (d) (Deleted by amendment, L. 2011, (HB 11-1198), ch. 127, p. 421, § 18, effective August 10, 2011.)

(e) A person subject to section 40-10.1-111 who operates a motor vehicle without having paid the annual identification fee for any motor vehicle operated as required by section 40-10.1-111 may be assessed a civil penalty of not more than four hundred dollars.

(f) and (f.5) (Deleted by amendment, L. 2011, (HB 11-1198), ch. 127, p. 421, § 18, effective August 10, 2011.)

(g) A person who intentionally violates any provision of article 10.1 or 10.5 of this title not enumerated in paragraph (a), (b), or (e) of this subsection (1), any rule promulgated by the commission pursuant to this title, or any safety rule adopted by the department of public safety relating to motor carriers as defined in section 40-10.1-101 may be assessed a civil penalty of not more than one thousand one hundred dollars; except that any person who violates a safety rule promulgated by the commission is subject to the civil penalties authorized pursuant to 49 CFR 386, subpart G, and associated appendices to part 386, as such subpart existed on October 1, 2010.

(h) (Deleted by amendment, L. 2011, (HB 11-1198), ch. 127, p. 421, § 18, effective August 10, 2011.)

(2) The commission shall set the amount of the civil penalties to be assessed pursuant to subsection (1) of this section in rules.

(3) If a person receives a second civil penalty assessment for a violation of subsection (1) of this section within one year after the first violation, the civil penalty assessed for the second violation may be two times the amount specified by rule for the violation.

(4) If a person receives more than two civil penalty assessments for violation of subsection (1) of this section within one year, the civil penalty assessed for each subsequent violation may be three times the amount specified by rule for the violation.

(5) (a) A person who fails to pay in full all civil penalties for a second or subsequent violation assessed by commission order pursuant to this section, subject to article 4 of title 24, C.R.S., within thirty days after the due date established by the order may be subject to have his or her vehicle registration cancelled by the department of revenue as specified in section 42-3-120 (4), C.R.S. Registration of any vehicles owned by the person for which the penalty was assessed may be denied until all penalties are paid or collected. Upon written notice from the commission, the department of revenue shall cancel the registration as specified in section 42-3-120 (4), C.R.S.

(b) This subsection (5) applies to all vehicles, regardless of when purchased, on or after August 10, 2011.

Source: **L. 89:** Entire section added, p. 1540, § 1, effective April 12. **L. 93:** (1) amended, p. 2069, § 27, effective July 1. **L. 95:** IP(1) and (1)(f) amended, p. 1209, § 24, effective May 31. **L. 96:** (1)(g) amended, p. 1549, § 8, effective July 1. **L. 98:** (1)(f) amended, p. 1058, § 6, effective July 1. **L. 2001:** (1)(g) amended, p. 1281, § 61, effective

June 5. **L. 2003:** IP(1), (1)(a), (1)(b), (1)(c), (1)(d), (1)(f), and (1)(g) amended, p. 1703, § 15, effective May 14; (1)(f.5) added and (1)(g) amended, p. 2380, § 4, effective August 6. **L. 2004:** IP(1) amended, p. 1211, § 98, effective August 4. **L. 2006:** IP(1), (1)(e), and (1)(g) amended and (1)(h) added, p. 1096, § 8, effective August 7. **L. 2009:** (5) added, (HB 09-1230), ch. 232, p. 1067, § 4, effective August 5. **L. 2010:** (1)(f) amended, (HB 10-1167), ch. 125, p. 415, § 2, effective April 15. **L. 2011:** Entire section amended, (HB 11-1198), ch. 127, p. 421, § 18, effective August 10.

Editor's note: Amendments to subsection (1)(g) by Senate Bill 03-225 and House Bill 03-1289 were harmonized.

ANNOTATION

Jurisdiction over interstate carriers. The public utilities commission is not precluded from issuing a civil penalty against a person conducting unauthorized interstate operations merely because the person holds an interstate certificate from the federal motor carrier safety

administration (FMCSA) in a case in which the facts are clear and no technical interpretation of the FMCSA certificate is necessary. *Trans Shuttle, Inc. v. Pub. Utils. Comm'n*, 89 P.3d 398 (Colo. 2004).

40-7-113.5. Civil penalties applicable to public utilities - exclusion from rate base.

(1) (a) In addition to any other penalty otherwise authorized by law and except as otherwise provided in subsections (3), (4), and (5) of this section, a public utility furnishing electric, gas, water, sewer, or telecommunications service that intentionally violates any provision of articles 1 to 7 or 15 of this title or of any rule or order of the commission pursuant to such articles, which provision is applicable to such utility, may be assessed a civil penalty of not more than two thousand dollars; except that nothing in this subsection (1) shall be construed to authorize the imposition of civil penalties upon:

(I) A cooperative electric association that has voted to exempt itself from regulation pursuant to section 40-9.5-103;

(II) A cooperative telephone association;

(III) A municipally owned utility; or

(IV) A nonprofit generation and transmission electric corporation or association.

(b) Civil penalties assessed pursuant to this section shall be paid and credited to the general fund, in addition to any other sanctions that may be imposed pursuant to law. The amount of any such penalties paid shall not be an allowable expense for rate-making purposes.

(2) (a) The commission shall adopt rules specifying the particular violations, and the amount of the civil penalties to be assessed for each violation, pursuant to subsection (1) of this section.

(b) No public utility shall be assessed a civil penalty if the utility is already subject to an existing reparation due to a commission order, commission rule, or statutory provision for the same violation.

(3) If any public utility receives a second civil penalty assessment for a violation of the same statute, rule, or order within one year after the first violation, the civil penalty assessed for the second violation shall be no greater than twice the amount specified by rule for such violation.

(4) If any public utility receives more than two civil penalty assessments for violation of the same statute, rule, or order within one year, the civil penalty assessed for each such subsequent violation shall be no greater than three times the amount specified by rule for such violation.

(5) Notwithstanding any provision of this section to the contrary, the total amount of civil penalties assessed against one public utility under this section shall not exceed the lesser of the following:

(a) One hundred fifty thousand dollars in any six-month period; or

(b) In any twelve-month period, one percent of the utility's gross annual revenues from services regulated by the commission, based on the most recent fiscal year for which final revenue figures are available.

Source: L. 2008: Entire section added, p. 1798, § 20, effective July 1.

40-7-114. Applicability of civil penalties to owners, employers, or other persons. (Repealed)

Source: L. 89: Entire section added, p. 1541, § 1, effective April 12. **L. 93:** (3) amended, p. 2070, § 28, effective July 1. **L. 2011:** Entire section repealed, (HB 11-1198), ch. 127, p. 416, § 3, effective August 10.

40-7-115. Each day a separate offense. Each day in which a person violates any statute, rule, or order of the commission for which a civil penalty may be imposed under section 40-7-113 or 40-7-113.5 may constitute a separate offense.

Source: L. 89: Entire section added, p. 1542, § 1, effective April 12. **L. 2008:** Entire section amended, p. 1799, § 21, effective July 1. **L. 2011:** Entire section amended, (HB 11-1198), ch. 127, p. 423, § 19, effective August 10.

40-7-116. Enforcement of civil penalties against carriers. (1) (a) Investigative personnel of the commission, Colorado state patrol officers, and port of entry officers as defined in section 42-8-102 (3), C.R.S., have the authority to issue civil penalty assessments for the violations enumerated in sections 40-7-112 and 40-7-113. When a person is cited for the violation, the person operating the motor vehicle involved shall be given notice of the violation in the form of a civil penalty assessment notice.

(b) The notice shall be tendered by the enforcement official, either in person or by certified mail, or by personal service by a person authorized to serve process under rule 4(d) of the Colorado rules of civil procedure, and shall contain:

- (I) The name and address of the person cited for the violation;
- (II) A citation to the specific statute or rule alleged to have been violated;
- (III) A brief description of the alleged violation, the date and approximate location of the alleged violation, and the maximum penalty amounts prescribed for the violation;
- (IV) The date of the notice;
- (V) A place for the person to execute a signed acknowledgment of receipt of the civil penalty assessment notice;
- (VI) A place for the person to execute a signed acknowledgment of liability for the violation; and
- (VII) Such other information as may be required by law to constitute notice of a complaint to appear for hearing if the prescribed penalty is not paid within ten days.

(c) A cited person shall execute the signed acknowledgment of receipt of the civil penalty assessment notice. The acknowledgment of liability shall be executed at the time the person cited pays the prescribed penalty. The person cited shall pay the civil penalty specified for the violation involved at the office of the commission, either in person or by depositing the payment postpaid in the United States mail within ten days after the issuance of the citation.

(d) (I) If the person cited does not pay the prescribed penalty within ten days after the issuance of the notice, the civil penalty assessment notice constitutes a complaint to appear before the commission. The person cited shall contact the commission on or before the time and date specified in the notice to set the complaint for a hearing on the merits in accordance with section 40-6-109. If the person cited fails to contact the commission on or before the time and date specified, the commission shall set the complaint for hearing.

(II) At the hearing, the commission has the burden of demonstrating a violation by a preponderance of the evidence.

(2) A civil penalty assessment notice shall not be considered defective so as to provide cause for dismissal solely because of a defect in the content of such civil penalty assessment notice. Any defect in the content of a civil penalty assessment notice issued as described in subsection (1) of this section may be cured by a motion to amend the same filed with the commission prior to hearing on the merits. No such amendment shall be permitted if substantial rights of the person cited are prejudiced.

Source: **L. 89:** Entire section added, p. 1542, § 1, effective April 12. **L. 93:** Entire section amended, p. 2070, § 29, effective July 1. **L. 95:** Entire section amended, p. 1210, § 25, effective May 31. **L. 2006:** Entire section amended, p. 1099, § 15, effective August 7. **L. 2011:** (1) amended, (HB 11-1198), ch. 127, p. 423, § 20, effective August 10. **L. 2012:** (1)(a) amended, (HB 12-1019), ch. 135, p. 465, § 6, effective July 1.

ANNOTATION

Formal complaint not required to initiate investigation. The public utilities commission has broad investigatory powers authorizing it to

conduct an investigation without the formality of a written complaint. *Eddie's Leaf Spring v. PUC*, 218 P.3d 326 (Colo. 2009).

40-7-116.5. Enforcement of civil penalties against public utilities. (1) (a) The director of the commission or his or her designee shall have the authority to issue civil penalty assessments for the violations enumerated in section 40-7-113.5, subject to hearing before the commission as set forth in this section. When a public utility is cited for a violation, the public utility shall be given notice of the violation in the form of a civil penalty assessment notice.

(b) The notice shall be tendered by the director or his or her designee, either in person or by certified mail, or by personal service by any person authorized to serve process under rule 4 (d) of the Colorado rules of civil procedure, and shall contain:

- (I) The name and address of the person cited for the violation;
- (II) A citation to the specific statute or rule alleged to have been violated;
- (III) A brief description of the alleged violation;
- (IV) The date and approximate location of the alleged violation;
- (V) The maximum penalty amounts prescribed for the violation;
- (VI) The date of the notice;
- (VII) A place for the public utility to execute a signed acknowledgment of receipt of the civil penalty assessment notice;
- (VIII) A place for the public utility to execute a signed acknowledgment of liability for the violation; and
- (IX) Any other information as may be required by law to constitute notice of a complaint to appear for hearing if the prescribed penalty is not paid within ten days.

(c) Every cited public utility shall execute the signed acknowledgment of receipt of the civil penalty assessment notice. The acknowledgment of liability shall be executed at the time the public utility cited pays the prescribed penalty. The public utility cited shall pay the civil penalty specified for the violation involved at the office of the commission, either in person or by depositing the payment postpaid in the United States mail within ten days after the issuance of the citation.

(d) If the public utility cited does not pay the prescribed penalty within ten days after the issuance of the notice, the civil penalty assessment notice shall constitute a complaint to appear before the commission. The public utility cited shall contact the commission on or before the time and date specified in the notice to set the complaint for a hearing on the merits in accordance with section 40-6-109. If the public utility cited fails to contact the commission on or before the time and date specified, the commission shall set the complaint for hearing. At the hearing, the commission shall have the burden of demonstrating a violation by a preponderance of the evidence.

(2) A civil penalty assessment notice shall not be considered defective so as to provide cause for dismissal solely because of a defect in the content of the civil penalty assessment notice. Any defect in the content of a civil penalty assessment notice issued as described in

subsection (1) of this section may be cured by a motion to amend the same filed with the commission prior to hearing on the merits; except that no such amendment shall be permitted if substantial rights of the public utility cited are prejudiced.

(3) In the case of an alleged continuing violation for which daily penalties would accrue under section 40-7-115, the issuance of a civil penalty assessment notice shall toll the accrual of daily penalties until the later to occur of the expiration of the ten-day period provided for payment pursuant to subsection (1) of this section or, if the matter is set for hearing, upon the conclusion of the proceedings through issuance of an order, dismissal of the complaint, or other final agency action, including judicial review and appeal, if any.

(4) Nothing in this section shall be construed to authorize the assessment of a civil penalty against an individual employee of a public utility.

Source: L. 2008: Entire section added, p.1799, § 22, effective July 1.

40-7-117. Gas pipeline safety rules - civil penalty for violations - compromise - other remedies. (1) Any person violating any rule adopted or order issued by the commission pursuant to the authority granted in section 40-2-115 (1.5) shall be subject to a civil penalty not to exceed one hundred thousand dollars per violation; except that, in the case of a group or series of related violations, the aggregate amount of such penalties shall not exceed one million dollars. Each day of a continuing violation shall constitute a separate violation.

(2) Any civil penalty authorized by this section may be compromised by the commission. In determining the amount of the penalty or of the amount to be agreed upon in compromise, the commission shall consider the gravity of the violation, the size of the business of the violator, and the amount of effort expended by the violator in any attempts made in good faith to remedy the violation or prevent future similar violations. The penalty or any lesser amount agreed upon in compromise may be recovered by the commission in a civil action in any court of competent jurisdiction.

(3) The remedy provided in this section is in addition to any other remedies available to the commission under the constitution or laws of this state or of the United States.

Source: L. 93: Entire section added, p. 2071, § 30, effective July 1. **L. 2003:** (1) amended, p. 1700, § 6, effective May 14.

ARTICLE 7.5

Civil Remedies Available to Utilities

40-7.5-101.	Definitions.	40-7.5-103.	Presumptions.
40-7.5-102.	Civil action allowed.	40-7.5-104.	Remedies cumulative.

40-7.5-101. Definitions. As used in this article, unless the context otherwise requires:

(1) “Bypassing” means the act of attaching, connecting, or in any manner affixing any wire, cord, socket, motor, pipe, or other instrument, device, or contrivance to the utility supply system or any part thereof in such a manner as to transmit, supply, or use any utility service without passing through an authorized meter or other device provided for measuring, registering, determining, or limiting the amount of electricity, gas, or water consumed.

(2) “Customer” means the person responsible for payment for utility services for the premises, and such term includes employees and agents of the customer.

(3) “Person” means any individual, firm, partnership, corporation, company, association, joint-stock association, or other legal entity.

(4) “Tampering” means the act of damaging, altering, adjusting, or in any manner interfering with or obstructing the action or operation of any meter or other device provided for measuring, registering, determining, or limiting the amount of electricity, gas, or water consumed.

(5) “Unauthorized metering” means the act of removing, moving, installing, connect-

ing, reconnecting, or disconnecting any meter or metering device for utility service by a person other than an authorized contractor, employee, or agent of such utility.

(6) "Utility" means any pipeline corporation, gas corporation, electrical corporation, water corporation, irrigation system, cooperative association, nonprofit corporation, nonprofit association, municipality, or person operating in whole or in part for the purpose of supplying electricity, gas, steam, or water, or any combination thereof, to the public or to any person.

(7) "Utility service" means the provision of electricity, gas, steam, water, or any other service or commodity furnished by the utility for compensation.

(8) "Utility supply system" includes all wires, conduits, pipes, cords, sockets, motors, meters, instruments, and other devices whatsoever used by the utility for the purpose of providing utility services.

Source: L. 83: Entire article added, p. 1564, § 1, effective July 1.

40-7.5-102. Civil action allowed. (1) A utility may bring a civil action for damages against any person who commits, authorizes, solicits, aids, abets, or attempts any of the following acts resulting in damages to the utility: Bypassing, tampering, or unauthorized metering. In addition, a utility may bring a civil action for damages pursuant to this section against any person who knowingly receives utility service through means of bypassing, tampering, or unauthorized metering. An action brought pursuant to this section shall be commenced within three years after the cause of action accrues.

(2) In any civil action brought pursuant to this section, the utility shall be entitled, upon proof of willful or intentional bypassing, tampering, or unauthorized metering, to recover as damages three times the amount of the actual damages, if any, plus all reasonable expenses and costs incurred on account of the bypassing, tampering, or unauthorized metering, including, but not limited to, costs and expenses for investigation, disconnection, reconnection, service calls, employees and equipment, and expert witnesses; costs of the suit; and reasonable attorney fees.

Source: L. 83: Entire article added, p. 1565, § 1, effective July 1.

40-7.5-103. Presumptions. (1) There is a rebuttable presumption that a tenant or occupant of any premises where bypassing, tampering, or unauthorized metering is proven to exist caused or had knowledge of such bypassing, tampering, or unauthorized metering if the tenant or occupant had controlled access to the part of the utility supply system on the premises where the bypassing, tampering, or unauthorized metering is proven to exist and if said tenant or occupant was responsible or partially responsible for payment, either directly or indirectly, to the utility or to any other person for utility services provided for the premises.

(2) There is a rebuttable presumption that a utility customer at any premises where bypassing, tampering, or unauthorized metering is proven to exist caused or had knowledge of such bypassing, tampering, or unauthorized metering if the customer had controlled access to the part of the utility supply system on the premises where the bypassing, tampering, or unauthorized metering is proven to exist.

(3) The presumptions provided in this section shall only shift the burden of going forward with evidence and shall in no event shift the burden of proof to the defendant in any action brought pursuant to this article.

Source: L. 83: Entire article added, p. 1565, § 1, effective July 1.

40-7.5-104. Remedies cumulative. It is the purpose of this article to provide additional remedies to avoid the wrongful use of the facilities of utilities, and nothing in this article shall abridge or alter rights of action or remedies existing prior to July 1, 1983, or created on or after said date.

Source: L. 83: Entire article added, p. 1566, § 1, effective July 1.

ARTICLE 8

Unclaimed Funds for Overcharges

40-8-101.	Undistributed overcharges turned over to municipality.	40-8-103.	Due and payable by escheat.
40-8-102.	Undistributed balance to county commissioners - when.	40-8-104.	Municipality or county liable for three years.
		40-8-105.	Authority of commission unaffected.

40-8-101. Undistributed overcharges turned over to municipality. (1) Except as provided in subsection (2) of this section, in all cases where there has been an overcharge by a public utility for any commodity or service on account of which rights to refunds have accrued to any municipality or the inhabitants thereof by reason of services or commodities received through the use of the streets of such municipality, with or without a franchise, and a refund of the amount overcharged has been directed by any court or other authorized governmental tribunal, and a part of such refund has not been made because of inability to find the persons entitled thereto within the time limit fixed by such court or tribunal, the court or tribunal shall direct that any such undistributed balance shall be turned over to the municipality.

(2) For gas, electric, and steam utilities, the public utilities commission may order that all or part of the undistributed balance of a refund be paid by the utility in an equitable manner to the general body of utility customers and the public utilities commission may order a gas or electric utility to pay up to ninety percent of the undistributed balance of a refund into the fund established by the Colorado commission on low income energy assistance pursuant to section 40-8.5-104.

Source: L. 47: p. 704, § 1. CSA: C. 137, § 69. CRS 53: § 115-8-1. C.R.S. 1963: § 115-8-1. L. 69: p. 954, § 52. L. 90: Entire section amended, p. 1760, § 2, effective May 31. L. 92: (2) amended, p. 2137, § 1, effective May 27.

ANNOTATION

This section is not a special law within the contemplation of § 25, art. V, Colo. Const., which provides that, where a general law can be made applicable, no special law shall be enacted. Sections 40-8-101 through 40-8-104 and § 15-3-614 are escheat statutes of equal dignity, each dealing with a specific kind of property. People ex rel. Dunbar v. People ex rel. City & County of Denver, 141 Colo. 459, 349 P.2d 142 (1960).

The general escheat statute, § 15-3-614, and this section must both be given effect by interpretation. Both being included in the revised statutes, both are to be given effect and are deemed to be complementary rather than conflicting. People ex rel. Dunbar v. People ex rel. City & County of Denver, 141 Colo. 459, 349 P.2d 142 (1960).

40-8-102. Undistributed balance to county commissioners - when. Subject to the provisions of section 40-8-101, in all cases where rights to refunds from a similar overcharge have accrued to the inhabitants of any county, outside of a municipality therein, the undistributed balance shall be turned over to the county commissioners of such county.

Source: L. 47: p. 704, § 2. CSA: C. 137, § 70. CRS 53: § 115-8-2. C.R.S. 1963: § 115-8-2. L. 90: Entire section amended, p. 1761, § 3, effective May 31.

This section sets up a class based on reasonableness, and all persons or units of government coming within this class receive treatment free from any discrimination. People ex rel. Dunbar v. People ex rel. City & County of Denver, 141 Colo. 459, 349 P.2d 142 (1960).

Administrative proceeding not equated with equity action. An administrative proceeding before the public utilities commission, a quasi-judicial, regulatory agency is not to be equated with an historical equity action. Ephraim Freightways, Inc. v. Red Ball Motor Freight, Inc., 376 F.2d 40 (10th Cir.), cert. denied, 389 U.S. 829, 88 S. Ct. 92, 19 L. Ed.2d 87 (1967).

40-8-103. Due and payable by escheat. The payment to such municipality or county, as set forth in sections 40-8-101 and 40-8-102, shall become due and payable by escheat, where not otherwise due and payable by operation of law.

Source: L. 47: p. 704, § 3. CSA: C. 137, § 71. CRS 53: § 115-8-3. C.R.S. 1963: § 115-8-3.

40-8-104. Municipality or county liable for three years. The municipality or county receiving such moneys shall be liable therefor for three years from the date when received and shall pay them out to any person entitled thereto proving his claim through court action or in any other method satisfactory to the municipality or county. At the end of such period, the fund shall become the property of the municipality or county.

Source: L. 47: p. 704, § 4. CSA: C. 137, § 72. CRS 53: § 115-8-4. C.R.S. 1963: § 115-8-4.

40-8-105. Authority of commission unaffected. Except as provided in section 40-8-101 (2), nothing in this article shall affect the authority of the public utilities commission, as otherwise provided by law, to determine the manner in which overcharges by a public utility shall be returned to the customers of that utility.

Source: L. 90: Entire section added, p. 1761, § 4, effective May 31.

ARTICLE 8.5

Unclaimed Utility Deposits

40-8.5-101.	Legislative declaration.		distribution of moneys to
40-8.5-102.	Applicability.		eligible recipients.
40-8.5-103.	Definitions.	40-8.5-105.	Eligibility.
40-8.5-103.5.	Commission created - duties.	40-8.5-106.	Unclaimed deposits.
40-8.5-104.	Commencement of program - establishment of system for	40-8.5-107.	Disbursement of moneys.

40-8.5-101. Legislative declaration. In enacting this article, the general assembly finds and declares that there is a need to make distributions of moneys to provide aid and assistance to the indigent, the elderly, and persons with disabilities, who do not otherwise have the financial resources to meet their heating and other energy needs. The general assembly further finds and declares that the low-income energy assistance program of the department of human services is the most appropriate entity to determine those most in need of such aid and assistance. Therefore, this article shall authorize the commission on low-income energy assistance to establish a fund from which to collect and distribute moneys to accomplish the goals set forth in this section. The moneys for such fund shall be based in part on unclaimed utility deposits.

Source: L. 90: Entire article added, p. 1758, § 1, effective May 31. L. 93: Entire section amended, p. 1671, § 90, effective July 1. L. 94: Entire section amended, p. 2719, § 304, effective July 1.

Cross references: For the legislative declaration contained in the 1994 act amending this section, see section 1 of chapter 345, Session Laws of Colorado 1994.

40-8.5-102. Applicability. This article shall apply to any electric or gas utility, as defined by section 40-8.5-103; except that this article shall apply only to those cooperative electric associations, as defined by section 40-9.5-102, which notify the commission that they elect to come under this article.

Source: L. 90: Entire article added, p. 1758, § 1, effective May 31.

40-8.5-103. Definitions. As used in this article, unless the context otherwise requires:

(1) "Commission" means the legislative commission on low income energy assistance, established in section 40-8.5-103.5.

(2) "Deposit" means moneys deposited by a subscriber with a utility to secure payment for services or any other amount which is paid in advance for electric or gas utility services to be furnished.

(3) "Electric utility" means every electrical corporation operating for the purpose of supplying electricity to the public for domestic, mechanical, or public uses and includes every public utility supplying electricity; except that this definition includes only those cooperative electric associations which notify the commission that they elect to come under this article.

(4) "Gas utility" means every gas corporation operating for the purpose of supplying gas to the public for domestic, mechanical, or public uses and includes every public utility supplying gas.

(5) (a) "Unclaimed moneys" means:

(I) Deposits, including any interest thereon, less any lawful deductions or amounts owed to a utility, that the utility has been directed to return to the subscriber by an administrative or judicial order or that is due the subscriber through the utility's security or construction deposit policy and that remains unclaimed by the subscriber for more than two years;

(II) Moneys which shall be deemed unclaimed and presumed abandoned when left with the utility for more than two years after termination of the services for which the deposit or advance was made or for more than two years after the deposit becomes payable and the utility has made reasonable efforts to locate the owner of the unclaimed moneys or distribution is attempted pursuant to a final order of an administrative agency or judicial body having jurisdiction to establish the terms and conditions of such deposit or advance.

(b) This term shall not include credits to existing subscribers through cost-adjustment mechanisms, and this term shall not include unclaimed patronage capital held by cooperative electric associations.

Source: L. 90: Entire article added, p. 1758, § 1, effective May 31.

40-8.5-103.5. Commission created - duties. (1) There is hereby created the legislative commission on low-income energy assistance. The commission shall be composed of eleven members to be appointed by the governor, each to serve a term of two years; except that the governor shall select seven of the initially appointed members to serve for one-year terms. Of the eleven members, five members shall be from private sector energy-related enterprises, one member shall be the director of the low-income energy assistance program in the state department of human services, one member shall be from the Colorado office of energy conservation, two members shall be consumers who are low-income energy assistance recipients, and two members shall be from the general public. Any interim appointment necessary to fill a vacancy which has occurred by any reason other than expiration of term shall be for the remainder of the term of the individual member whose office has become vacant.

(2) The governor may remove any commission member for cause, which shall include but need not be limited to misconduct, incompetence, or neglect of duty.

(3) Any commission member shall be immune from liability in any civil action brought against such member for acts occurring while acting in the capacity of a commission member if such member was acting in good faith, made reasonable efforts to obtain the facts of the matter as to which action was taken, and acted in the reasonable belief that the action taken was warranted by the facts.

(4) (a) No later than December 15, 2008, the commission shall make recommendations to the governor, the speaker of the house of representatives, and the president of the senate regarding any necessary legislative changes to improve the effectiveness and efficiency of the state's low-income energy assistance services provided pursuant to article 8.7 of this title and section 26-1-109, C.R.S. With assistance and consultation from representatives from two counties chosen by the executive director, or his or her designee, of Colorado

counties, incorporated, or its successor organization, the commission shall assess the strengths and weaknesses of the current service delivery systems within the state and shall review effective service delivery systems and models of other states that may be appropriate for utilization in this state. The commission's recommendations shall build upon the positive aspects of the current service delivery system, including, but not limited to, the effective and efficient management of current funding to maximize assistance to the state's low-income population, infrastructure that is already in place to efficiently distribute benefits to eligible clients in a timely manner, and coordination already established between energy conservation measures and direct assistance. The commission's recommendations shall include, but shall not be limited to:

(I) How best to target the state's low-income energy assistance resources toward the identified needs;

(II) How best to coordinate public and private energy assistance activities with the objective of minimizing the financial burden of energy costs for the state's most needy;

(III) How best to streamline administrative processes; and

(IV) Suggested changes to state statutes, rules, or policies related to low-income energy consumers in the state.

(b) The commission may seek and receive public and private funding to assist in the conduct of the assessment and review required by paragraph (a) of this subsection (4), including but not limited to assistance from the existing resources of the department of human services created in section 24-1-120, C.R.S., the Colorado energy office created in section 24-38.5-101, C.R.S., and energy outreach Colorado, a Colorado nonprofit corporation, as described in section 40-8.7-103 (4).

Source: L. 90: Entire article added, p. 1759, § 1, effective May 31. L. 93: (1) amended, p. 2071, § 31, effective July 1. L. 94: (1) amended, p. 2719, § 305, effective July 1. L. 2008: (4) added, p. 1333, § 5, effective May 27. L. 2012: (4)(b) amended, (HB 12-1315), ch. 224, p. 981, § 51, effective July 1.

Cross references: For the legislative declaration contained in the 1994 act amending subsection (1), see section 1 of chapter 345, Session Laws of Colorado 1994.

40-8.5-104. Commencement of program - establishment of system for distribution of moneys to eligible recipients. The commission shall establish a fund through a nonprofit corporation established for the purpose of collecting and distributing moneys to eligible recipients, who shall be designated by the administrator of the low-income energy assistance program in the department of human services, for use in the payment of electric and gas utility bills for services received.

Source: L. 90: Entire article added, p. 1760, § 1, effective May 31. L. 93: Entire section amended, p. 2071, § 32, effective July 1. L. 94: Entire section amended, p. 2720, § 306, effective July 1.

Cross references: For the legislative declaration contained in the 1994 act amending this section, see section 1 of chapter 345, Session Laws of Colorado 1994.

40-8.5-105. Eligibility. The department of human services shall promulgate rules and regulations establishing the criteria for eligibility for recipients of assistance pursuant to this article, which criteria shall be based in part on household size and income and the energy costs of the household residence for the preceding year.

Source: L. 90: Entire article added, p. 1760, § 1, effective May 31. L. 94: Entire section amended, p. 2720, § 307, effective July 1.

Cross references: For the legislative declaration contained in the 1994 act amending this section, see section 1 of chapter 345, Session Laws of Colorado 1994.

40-8.5-106. Unclaimed deposits. Unclaimed deposits shall be paid by the electric and gas utilities into the fund designated by the commission pursuant to section 40-8.5-104.

Source: L. 90: Entire article added, p. 1760, § 1, effective May 31. L. 93: Entire section amended, p. 2072, § 33, effective July 1.

40-8.5-107. Disbursement of moneys. The nonprofit corporation designated by the commission pursuant to section 40-8.5-104 shall disburse moneys to the state department of human services to make energy assistance payments on behalf of or to persons determined by the department to be eligible for such assistance in accordance with section 40-8.5-105.

Source: L. 90: Entire article added, p. 1760, § 1, effective May 31. L. 91: Entire section amended, p. 1901, § 2, effective July 1. L. 94: Entire section amended, p. 2720, § 308, effective July 1.

Cross references: For the legislative declaration contained in the 1994 act amending this section, see section 1 of chapter 345, Session Laws of Colorado 1994.

ARTICLE 8.7

Low-income Energy Assistance

40-8.7-101.	Short title.	40-8.7-109.	Low-income energy assistance program - eligibility.
40-8.7-102.	Legislative declaration.		
40-8.7-103.	Definitions.	40-8.7-110.	Reports.
40-8.7-104.	Energy assistance program - creation - energy assistance charge - rules.	40-8.7-111.	Jurisdiction of the public utilities commission.
40-8.7-105.	Customer opt-in provision.	40-8.7-112.	Department of human services low-income energy assistance fund - creation - energy outreach Colorado low-income energy assistance fund - creation - Colorado energy office low-income energy assistance fund - creation - definitions.
40-8.7-106.	Municipally owned gas, electric, and gas and electric utilities and cooperative electric associations.		
40-8.7-107.	Disposition of moneys.		
40-8.7-108.	Energy outreach Colorado - administration of the energy assistance charge.		

40-8.7-101. Short title. This article shall be known and may be cited as the “Low-income Energy Assistance Act”.

Source: L. 2005: Entire article added, p. 478, § 1, effective May 5.

40-8.7-102. Legislative declaration. (1) The general assembly hereby finds, determines, and declares that, in order to serve the best interests of the citizens of Colorado and, in particular, to aid low-income citizens of Colorado, there is a need for an energy assistance program to collect an optional low-income energy assistance contribution from utility customers in Colorado.

(2) The general assembly further finds that the most efficient way to support such a program is for gas and electric utilities to provide the opportunity for each utility customer to contribute an optional amount on the customer’s billing statement for low-income energy assistance that will be displayed monthly on the utility bill until the customer indicates otherwise and that the moneys collected shall be most economically and equitably disbursed through a system in which the contributions collected by electric utilities and gas utilities are transmitted to energy outreach.Colorado.

Source: L. 2005: Entire article added, p. 478, § 1, effective May 5.

40-8.7-103. Definitions. As used in this article, unless the context otherwise requires:

(1) "Alternative energy assistance program" means a program operated by a municipally owned electric and gas utility or cooperative electric association that is not part of the energy assistance program established pursuant to this article.

(2) "Customer" means the named holder of an individually metered account upon which charges for electricity or gas are paid to a utility. "Customer" shall not include a customer that receives electricity or gas for the sole purpose of reselling the electricity or gas to others.

(3) "Energy assistance program" or "program" means the low-income energy assistance program created by section 40-8.7-104 and designed to provide financial assistance, residential energy efficiency, and energy conservation assistance.

(4) "Organization" means energy outreach Colorado, a Colorado nonprofit corporation, formerly known as the Colorado energy assistance foundation.

(5) "Remittance device" means the section of a customer's utility billing statement that is returned to the utility company for payment.

(6) "Utility" means a corporation, association, partnership, cooperative electric association, or municipally owned entity that provides retail electric service or retail gas service to customers in Colorado. "Utility" does not mean a propane company.

Source: L. 2005: Entire article added, p. 479, § 1, effective May 5. L. 2006: (1) amended, p. 1509, § 61, effective June 1.

40-8.7-104. Energy assistance program - creation - energy assistance charge - rules. (1) There is hereby created the low-income energy assistance program to collect and disburse an optional energy assistance contribution in Colorado in accordance with this article.

(2) Except as otherwise provided in this article, every utility doing business in Colorado shall participate in the energy assistance program and shall provide the opportunity for utility customers to make an optional energy assistance contribution on the monthly remittance device on their utility billing statement beginning September 1, 2006. Each utility shall provide the opportunity for customers to donate the optional energy assistance contribution as provided in section 40-8.7-105 (2).

(3) Any reasonable costs that a utility incurs in connection with the program, including the initial costs of setting up the collection mechanism and reformatting its billing systems to solicit the optional contribution, shall be reimbursed from the moneys collected by the program, and this amount shall be approved for each utility by the public utilities commission. The reimbursed amounts shall be transmitted to the utilities before the remaining moneys are distributed to the organization.

Source: L. 2005: Entire article added, p. 479, § 1, effective May 5.

40-8.7-105. Customer opt-in provision. (1) The public utilities commission shall determine the mechanism for an opt-in provision whereby the energy assistance contributions described in section 40-8.7-104 will be collected from those customers who give notice of their intent to participate in the energy assistance program.

(2) Each utility shall solicit voluntary donations through a check-off mechanism displayed on the monthly remittance device. Recommended check-off categories of five dollars, ten dollars, twenty dollars, and "other amount" shall be displayed.

(3) Once a customer voluntarily opts into the program, the appropriate contribution shall be assessed on a monthly basis until the customer notifies the utility of his or her desire to remove the contribution. Each utility shall establish procedures to notify customers about their ability to cancel any voluntary contribution.

(4) Once the utility customer opts into the program, the energy assistance contribution shall appear as a separate line item and shall be identified in the billing statement as a contribution. The line item shall identify the optional low-income contribution, state the amount of the optional contribution, and be included in the total amount due.

(5) In accordance with article 4 of title 24 C.R.S., on or before November 1, 2005, the public utilities commission shall initiate at least one rule-making proceeding to accomplish the following:

(a) Establish a program whereby customers will be solicited to contribute a flat amount on the monthly remittance device on the utility billing statement;

(b) Encourage each utility to provide notification, where feasible, to customers participating in the program about the customer's ability to continue to contribute when the customer changes his or her address within the service territory;

(c) Require the utility to make additional efforts to inform utility customers about the program to ensure that adequate notice of the opt-in provision is given to all customers;

(d) In addition to notification on the monthly remittance device on the billing statement, require each utility to notify its customers about the opt-in provision prior to September 1, 2006, and require each utility to provide clear, periodic notice of the opt-in provision at least twice per year through bill inserts, in a statement on the bill or envelope, or in other utility communication pieces or through an alternative method approved by the commission. The costs of the insert and any other notification efforts will be considered in the utility's cost of service.

(e) Require each utility to consider the most cost-effective method possible when implementing the program; and

(f) Ensure that there is a mechanism for customers who make electronic payments to the utility to remove the optional charge from their monthly payments.

Source: L. 2005: Entire article added, p. 480, § 1, effective May 5.

40-8.7-106. Municipally owned gas, electric, and gas and electric utilities and cooperative electric associations. (1) If a municipally owned gas, electric, or gas and electric utility or a cooperative electric association operates an alternative energy assistance program to support its low-income customers with their home energy needs, then the governing body of the municipally owned gas, electric, or gas and electric utility or cooperative electric association may self-certify its alternative energy assistance program and, upon self-certification, shall have no obligations under this article. The municipally owned utility or cooperative electric association shall submit a statement to the organization that such utility or cooperative electric association has an alternative energy assistance program. In order for such utility or cooperative electric association to self-certify, such alternative energy assistance program shall meet the following criteria:

(a) The amount and method for funding of the program shall be determined by the governing body.

(b) Program moneys shall be collected and distributed in a manner and under eligibility criteria determined by the governing body for the purpose of residential energy assistance to customers who are challenged with paying energy bills for financial reasons, including to seniors on fixed incomes, individuals with disabilities, and low-income individuals.

(2) If the governing body of a municipally owned gas, electric, or gas and electric utility or a cooperative electric association determines that the service area of such utility or cooperative has a limited number of people who qualify for energy assistance, such utility or cooperative electric association may be exempt from the obligations of this article.

(3) If a municipally owned gas, electric, or gas and electric utility or cooperative electric association has not self-certified an alternative energy assistance program pursuant to subsection (1) of this section or has not exempted itself pursuant to subsection (2) of this section, such utility or cooperative electric association shall collect an optional energy assistance charge from its customers as provided in section 40-8.7-104 (1) and (2) or pursuant to a procedure approved by the governing municipal utility or cooperative, which procedure shall be designed to notify all customers at least twice each year of the option to contribute by means of a monthly energy assistance charge and shall provide a convenient means for customers to exercise that option. In such circumstances, the governing body of such utility or cooperative shall determine the disposition and delivery of the optional energy assistance charge that it collects on the following basis:

(a) The governing body may elect to deliver the optional charge that it collects to the organization for distribution in accordance with this article.

(b) If the governing body does not make such election pursuant to paragraph (a) of this subsection (3), the energy assistance moneys collected shall be distributed under eligibility criteria determined by the governing body for the purpose set forth in paragraph (b) of subsection (1) of this section.

(4) A municipally owned gas, electric, or gas and electric utility or cooperative electric association may provide funding for energy assistance to the organization by using a source of funding other than the optional customer contribution on each bill. If the amount of such assistance approximates the amount reasonably expected to be collected from an optional charge on customer bills, a municipal utility or cooperative need not certify its own program pursuant to subsection (1) of this section and need not collect an optional energy assistance charge but shall be entitled to participate in the organization's program.

(5) Any reasonable costs that a municipally owned gas, electric, or gas and electric utility or cooperative electric association incurs in connection with the program, including the initial costs of setting up the collection mechanism, may be reimbursed at the discretion of the governing body from the energy assistance moneys collected.

Source: L. 2005: Entire article added, p. 481, § 1, effective May 5.

40-8.7-107. Disposition of moneys. (1) Each gas and electric utility shall transfer the moneys from the energy assistance contributions collected under this article to the organization on the following schedule:

(a) For the moneys collected during the period of January 1 to March 31 of each year, the utility shall transfer the collected moneys to the organization before May 1 of such year;

(b) For the moneys collected during the period of April 1 to June 30 of each year, the utility shall transfer the collected moneys to the organization before August 1 of such year;

(c) For moneys collected during the period of July 1 to September 30 of each year, the utility shall transfer the collected moneys to the organization before November 1 of such year; and

(d) For moneys collected during the period of October 1 to December 31 of each year, the utility shall transfer the collected moneys to the organization before February 1 of the next year.

(2) Each utility shall provide the organization with a summary of how the moneys collected were generated, including the number of customers participating in the program.

(3) The organization shall pay the public utilities commission from the moneys transferred to the organization pursuant to subsection (1) of this section for any administrative costs incurred pursuant to this article.

Source: L. 2005: Entire article added, p. 482, § 1, effective May 5.

40-8.7-108. Energy outreach Colorado - administration of the energy assistance charge. (1) The organization shall hold and administer all moneys collected pursuant to this article delivered to it by the utilities pursuant to section 40-8.7-107 in a separately identifiable account, which shall be restricted to the purposes set forth in this article. The organization shall maintain its books and records pertaining to the energy assistance contributions in accordance with generally accepted accounting principles and, in addition, shall maintain records adequate to identify the moneys collected by each utility. If the organization commingles the moneys collected and delivered with other assets of the organization for investment purposes, the organization shall maintain accurate accounts of the investment moneys and shall credit or charge a pro rata portion of all investment earnings, gains, or losses to the account that holds the energy assistance charges.

(2) The organization shall use the energy assistance contribution to provide low-income energy assistance and to improve energy efficiency. The financial assistance moneys shall be paid to each utility as vendor payments. The moneys shall not be used for propane, gas, or electric assistance for customers whose propane, gas, electric, or gas and electric

companies or cooperative electric associations do not participate in the program. The organization may use up to five percent of the moneys collected for administration of the energy assistance program in accordance with generally accepted accounting principles.

(3) The organization shall, on an annual basis, develop a budget for the energy assistance program to determine the allocation of the energy assistance contributions collected under this article.

Source: L. 2005: Entire article added, p. 483, § 1, effective May 5.

40-8.7-109. Low-income energy assistance program - eligibility. (1) The organization shall provide energy assistance to individuals and organizations in Colorado. Individuals eligible for low-income energy assistance shall be current or prospective utility customers who:

(a) Are certified by the department of human services as qualified to receive financial assistance payments;

(b) Are citizens or legal residents of the United States and residents of Colorado; and

(c) Have a monthly household gross income at or below one hundred eighty-five percent of the federal poverty line.

(2) The department of human services shall periodically recertify an individual's eligibility to receive low-income energy assistance.

(3) In providing low-income energy assistance, the organization shall give priority to households where one or more persons are recipients of:

(a) An old age pension as set forth in section 26-2-111 (2), C.R.S.;

(b) Aid to the needy disabled as set forth in section 26-2-111 (4), C.R.S.;

(c) Aid to the blind as set forth in section 26-2-111 (5), C.R.S.;

(d) Supplemental social security disability benefits under 42 U.S.C. sec. 1396 et seq.;
or

(e) Colorado works program assistance as set forth in section 26-2-706.6, C.R.S.

Source: L. 2005: Entire article added, p. 483, § 1, effective May 5. **L. 2008:** Entire section amended, p. 1801, § 23, effective July 1; (3)(e) amended, p. 1978, § 27, effective January 1, 2009. **L. 2010:** (1)(c) amended, (HB 10-1422), ch. 419, p. 2124, § 183, effective August 11.

Editor's note: Subsection (1)(e), amended by Senate Bill 08-177, was renumbered as subsection (3)(e) and harmonized with House Bill 08-1227, effective January 1, 2009.

40-8.7-110. Reports. (1) The organization shall submit a written report to the general assembly, the legislative audit committee, and the office of the state auditor on or before March 31 of each year, beginning in 2007, that covers the immediately preceding calendar year. The report shall include:

(a) An itemized account of moneys received by the organization from each utility;

(b) The amount of moneys distributed, the type of assistance provided, the geographic area of the state served, and an itemization of the programs through which the moneys are expended;

(c) The number of low-income households served, by utility and by type of assistance provided;

(d) An audited financial statement from the organization; and

(e) A summary of how the moneys collected were generated, including the number of customers participating in the program.

(1.5) To the extent applicable, the organization shall include in the report the information required by paragraphs (b) and (c) of subsection (1) of this section for moneys received from the Colorado energy office pursuant to section 40-8.7-112 (2) (a).

(2) The report shall be made available to the public for review.

Source: **L. 2005:** Entire article added, p. 484, § 1, effective May 5. **L. 2006:** (1.5) added, p. 6, § 2, effective February 3. **L. 2008:** (1.5) amended, p. 1874, § 15, effective June 2. **L. 2012:** (1.5) amended, (HB 12-1315), ch. 224, p. 981, § 52, effective July 1.

40-8.7-111. Jurisdiction of the public utilities commission. Nothing in this article shall be construed to expand or alter the jurisdiction of the public utilities commission.

Source: **L. 2005:** Entire article added, p. 484, § 1, effective May 5.

40-8.7-112. Department of human services low-income energy assistance fund - creation - energy outreach Colorado low-income energy assistance fund - creation - Colorado energy office low-income energy assistance fund - creation - definitions.

(1) (a) There is hereby created in the state treasury the department of human services low-income energy assistance fund, which shall be administered by the department of human services and shall consist of all moneys transferred by the treasurer as specified in section 39-29-109.3 (2) (f), C.R.S. All moneys in the fund are continuously appropriated to the department of human services for the purpose of increasing available funds under the low-income energy assistance program specified in section 26-1-109, C.R.S. All moneys in the fund at the end of each fiscal year shall be retained in the fund and shall not revert to the general fund or any other fund.

(b) Notwithstanding any provision of paragraph (a) of this subsection (1) to the contrary, on June 1, 2009, the state treasurer shall deduct three million dollars from the department of human services low-income energy assistance fund and transfer such sum to the general fund.

(c) Notwithstanding any provision of paragraph (a) of this subsection (1) to the contrary, on March 18, 2010, the state treasurer shall deduct one million six hundred twenty-five thousand dollars from the department of human services low-income energy assistance fund and transfer such sum to the operational account of the severance tax trust fund.

(d) Notwithstanding any provision of paragraph (a) of this subsection (1) to the contrary, on June 30, 2011, the state treasurer shall deduct three million two hundred fifty thousand dollars from the department of human services low-income energy assistance fund and transfer such sum to the general fund.

(e) Notwithstanding any provision of paragraph (a) of this subsection (1) to the contrary, on January 5, 2012, the state treasurer shall deduct three million two hundred fifty thousand dollars from the department of human services low-income energy assistance fund and transfer such sum to the general fund.

(2) (a) There is hereby created in the state treasury the energy outreach Colorado low-income energy assistance fund, which shall be administered by the Colorado energy office and shall consist of all moneys transferred by the state treasurer as specified in section 39-29-109.3 (2) (f), C.R.S. All moneys in the fund are continuously appropriated to the Colorado energy office for distribution to the organization to be used for the purposes set forth in this subsection (2). All moneys in the fund at the end of each fiscal year shall be retained in the fund and shall not revert to the general fund or any other fund.

(b) The organization shall use moneys it receives from the Colorado energy office pursuant to paragraph (a) of this subsection (2) to provide direct bill payment assistance to low-income households when the department of human services is not accepting client applications for the program specified in section 26-1-109, C.R.S. Bill payments shall be paid to each utility as vendor payments. The organization may use up to five percent of the moneys for administration of the direct bill payment assistance in accordance with generally accepted accounting principles.

(c) The organization shall hold and administer all moneys it receives from the Colorado energy office pursuant to paragraph (a) of this subsection (2) in a separately identifiable account, the use of which shall be restricted to the purposes set forth in paragraph (b) of this subsection (2). The organization shall maintain its books and records pertaining to any moneys received from the Colorado energy office in accordance with generally accepted

accounting principles. If the organization commingles the moneys with other assets of the organization for investment purposes, the organization shall maintain accurate accounts of the investment moneys and shall credit or charge a pro rata portion of all investment earnings, gains, or losses to the account that holds the moneys received from the Colorado energy office pursuant to paragraph (a) of this subsection (2).

(d) The organization shall develop an annual budget for the direct bill payment assistance program to determine the allocation of the moneys received from the Colorado energy office pursuant to paragraph (a) of this subsection (2).

(e) The organization shall include information related to any moneys received from the Colorado energy office pursuant to paragraph (a) of this subsection (2) in the report it prepares pursuant to section 40-8.7-110.

(3) (a) There is hereby created in the state treasury the Colorado energy office low-income energy assistance fund, which shall be administered by the Colorado energy office and shall consist of all moneys transferred by the treasurer as specified in section 39-29-109.3 (2) (f), C.R.S., all moneys transferred to the fund, all moneys received as a result of contracts entered into by the Colorado energy office for the office's program to improve the home energy efficiency of low-income households, and all moneys received by the Colorado energy office from gifts, grants, and donations for the office's program to improve the home energy efficiency of low-income households. All moneys in the fund are continuously appropriated to the Colorado energy office to be used for the purposes set forth in this subsection (3). All moneys in the fund at the end of each fiscal year shall be retained in the fund and shall not revert to the general fund or any other fund.

(b) The Colorado energy office shall use moneys it receives pursuant to paragraph (a) of this subsection (3) for a program to provide home energy efficiency improvements for low-income households, which shall include any of the following services:

(I) Providing low-cost and cost-effective energy efficiency measures and energy education to low-income households in general;

(II) Retrofitting households with low-cost and cost-effective energy efficiency measures through the state weatherization assistance program;

(III) Providing heating system and other appliance replacement;

(IV) Providing cost-effective renewable energy measures;

(V) Supplementing the funding for any energy efficiency measures or services offered to low-income households through electric or gas utility energy efficiency or renewable energy programs; or

(VI) Paying a portion of the cost for energy efficiency upgrades to new housing built for low-income families.

(c) Households eligible for the home energy efficiency program described in paragraph (b) of this subsection (3) shall be at or below one hundred percent of the area median income guidelines adjusted for family size based on the most recently published area median income limits established by the United States department of housing and urban development.

(d) In carrying out the program to improve the home energy efficiency of low-income households, the Colorado energy office shall:

(I) Serve as many low-income households throughout the state as possible;

(II) Achieve the maximum lifetime energy savings per dollar expended;

(III) Use competitive bidding procedures to hire contractors; and

(IV) Whenever feasible, contract with Colorado accredited youth corps to provide labor.

(e) The Colorado energy office may use up to five percent of the moneys transferred pursuant to paragraph (a) of this subsection (3) for planning, overseeing, and evaluating the program to improve the home energy efficiency of low-income households. The Colorado energy office shall not hire additional state employees using moneys transferred pursuant to paragraph (a) of this subsection (3) to implement the program but may contract with nonprofit organizations, for-profit organizations, and governmental entities as is necessary to carry out the program.

(f) For any fiscal year in which moneys are expended as part of the program to improve the home energy efficiency of low-income households, the Colorado energy office shall prepare and submit to the general assembly an annual report that specifies:

- (I) How the moneys were expended;
- (II) The number of households served;
- (III) The expected energy savings and other nonenergy benefits; and
- (IV) Recommendations for any future programs of this nature.

(g) If the governor's energy office, as it existed prior to July 1, 2012, cannot use all of the moneys it receives for the state fiscal year commencing July 1, 2008, pursuant to paragraph (a) of this subsection (3) for the program described in paragraph (b) of this subsection (3), at the end of the fiscal year the state treasurer shall transfer the moneys that the governor's energy office cannot use to the clean energy fund created in section 24-75-1201 (1), C.R.S., as said fund existed prior to July 1, 2012.

(4) For purposes of this section, unless the context otherwise requires:

(a) "Colorado accredited youth corps" means a youth corps organization that is accredited by the Colorado youth corps association or the national association of service and conservation corps, or any successor organization.

(a.5) "Colorado energy office" means the Colorado energy office created in section 24-38.5-101, C.R.S.

(b) "Cost-effective" means energy efficiency measures whose monetary benefits exceed costs over the lifetime of the measures.

(c) "Energy efficiency measures" means measures that reduce consumption of fossil fuels or electricity.

(d) Repealed.

Source: L. 2008: Entire section added, p. 1868, § 4, effective June 2; (3)(c) amended, p. 1337, § 12, effective May 27. **L. 2009:** (1) amended, (SB 09-279), ch. 367, p. 1932, § 24, effective June 1. **L. 2010:** (1)(c) added, (HB 10-1319), ch. 28, p. 104, § 2, effective March 18. **L. 2011:** (1)(d) and (1)(e) added, (SB 11-226), ch. 190, p. 735, § 9, effective May 19. **L. 2012:** (2), (3)(a), IP(3)(b), IP(3)(d), (3)(e), IP(3)(f), and (3)(g) amended, (4)(a.5) added, and (4)(d) repealed, (HB 12-1315), ch. 224, p. 981, § 53, effective July 1.

Editor's note: The references to § 26-1-109 in this section apply to the state department of human services accepting funds on behalf of the state for any state plan not specifically identified, such as low-income energy assistance, relating to public assistance and welfare activities.

ARTICLE 9

Carriers Generally

40-9-101.	Application of sections.	40-9-107.	hour.
40-9-102.	Definitions.		Damages for failure to comply.
40-9-103.	Liability for damages.	40-9-108.	Accidents - notice - investigation.
40-9-104.	Violation - penalty.		
40-9-105.	Diligence in transporting - penalty for failure.	40-9-109.	Transportation of dogs accompanying blind and physically disabled persons.
40-9-106.	Transportation of livestock - not less than ten miles per		

40-9-101. Application of sections. The provisions of sections 40-9-101 to 40-9-108 shall apply to any person who is held to be a common carrier within the meaning and purpose of said sections and to any common carrier engaged in the transportation of passengers or property by railroad from one point within the state to any other point within the state. These sections shall not apply to the ownership or operation of street transportation public utilities conducted solely as common carriers in the transportation of passengers.

Source: L. 07: p. 531, § 1. R.S. 08: § 5445. L. 10: p. 45, § 1. C.L. § 2978. CSA: C. 29, § 1. CRS 53: § 115-12-1. C.R.S. 1963: § 115-12-1. L. 69: p. 963, § 73.

Cross references: For lien of common carrier on goods and baggage, see § 38-20-105; for motor vehicle carriers, see article 10 of title 40; for railroads, see article 20 of title 40.

ANNOTATION

Section has no application to private carriers. Common carriers are authorized to accept freight originating on, or destined to points on, lines of connecting carriers, and the transportation of such shipments on joint through rates or otherwise, but no provision in the law authorizes such joint operations by private carriers. *McKay v. Pub. Utils. Comm'n*, 104 Colo. 402, 91 P.2d 965 (1939).

The objects and purposes of the act are broad and comprehensive in relation to com-

mon carriers. That title discloses that it was intended thereby to regulate common carriers in the state and to exercise a general supervision over their conduct and operation, and it must be taken that, by the act as framed and worded, the general assembly intended to accomplish the design thereof which it expressly stated in the title. *Consumers' League v. Colo. & S. Ry.*, 53 Colo. 54, 125 P. 577 (1912).

40-9-102. Definitions. As used in sections 40-9-101 to 40-9-105, unless the context otherwise requires:

(1) "Common carriers" also includes express companies, private freight car lines, and pipe lines.

(2) "Railroad" includes all bridges used or operated in connection with any railroad; all the roads in use by any corporation operating a railroad, whether owned or operated under a contract, agreement, or lease; all switches, spurs, tracks, and terminal facilities of every kind used or necessary in transportation of persons or property; all freight depots, yards, and grounds used or necessary in the transportation of persons or property; and all freight depots, yards, and grounds, used or necessary in the transportation or delivery of any of said property.

(3) "Transportation" includes all cars, and all other vehicles and instrumentalities and facilities of a shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof, and all service in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, demurrage, storing, or handling of property transported. It is the duty of every common carrier, subject to the provisions of sections 40-9-101 to 40-9-105, to provide such transportation upon reasonable request therefor, and to establish through routes and just and reasonable rates applicable thereto, and to provide a sufficient number of cars and a reasonable time schedule for trains.

Source: L. 07: p. 532, § 2. R.S. 08: § 5446. L. 10: p. 46, § 2. C.L. § 2979. CSA: C. 29, § 2. CRS 53: § 115-12-2. C.R.S. 1963: § 115-12-2.

ANNOTATION

Section is valid. Last portion of this section held not unconstitutional as a delegation of leg-

islative power. *Colo. & S. Ry. v. State R. R. Comm'n*, 54 Colo. 64, 129 P. 506 (1912).

40-9-103. Liability for damages. (1) In case any common carrier subject to the provisions of sections 40-9-101 to 40-9-105 does, causes, or permits any act, matter, or thing prohibited or declared to be unlawful in said sections or omits any act, matter, or thing required to be done in said sections such common carrier shall be liable to the person injured thereby for the full amount of damages sustained in consequence of any violation of the provisions of sections 40-9-101 to 40-9-105.

(2) Every common carrier receiving property for transportation between points within this state shall issue a receipt or a bill of lading therefor and shall be liable to the lawful holder thereof for all loss, damage, or injury to such property caused by it or by any

common carrier to which such property may be delivered or over whose lines such property may pass. No contract, receipt, rule, or regulation shall exempt such common carrier from any liability imposed in this section, but the carrier shall not be responsible for any greater sum than the value as fixed in the contract, receipt, or bill of lading where such valuation is stated. Nothing in this section shall deprive any holder of such receipt or bill of lading of any remedy or right of action which he has under existing law. The common carrier issuing such receipt or bill of lading shall be entitled to recover from the common carrier on whose lines the loss, damage, or injury has been sustained the amount of such loss, damage, or injury as it may be required to pay to the owners of such property, as may be evidenced by any receipt, judgment, or transcript thereof.

(3) Notwithstanding subsection (2) of this section, a rail carrier may establish rates for the transportation of property under which the liability of the carrier for such property is limited to a value established by a written declaration of the shipper or by a written agreement between the shipper and the rail carrier, and such carrier may provide in such written declaration or agreement for specified amounts to be deducted from any claim against the rail carrier for loss or damage to the property or for delay in the transportation of such property.

Source: L. 07: p. 534, § 8. R.S. 08: § 5452. L. 10: p. 49, § 8. C.L. § 2985. CSA: C. 29, § 8. CRS 53: § 115-12-3. C.R.S. 1963: § 115-12-3. L. 84: (3) added, p. 1043, § 8, effective July 1.

ANNOTATION

Law reviews. For article, "Impact of the Uniform Commercial Code on Colorado Law", see 42 Den. L. Ctr. J. 67 (1965).

Agent may place value on goods. An agent having the authority to make shipment of goods has authority to make a statement of their value, even though he has no knowledge of the actual value. *Denver & R. G. R. R. v. Teufel*, 64 Colo. 515, 172 P. 1060 (1918).

The provision of this section reserving to the shipper "any remedy or right of action which he had under existing laws", does not

impair the effect of the preceding provision limiting the carrier's liability to the value stated. *Denver & R. G. R. R. v. Teufel*, 64 Colo. 515, 172 P. 1060 (1918).

Maximum liability is amount fixed in bill of lading. A common carrier who fails to deliver goods committed to him for carriage is responsible, under this section, for no more than the value of the goods specified in the bill of lading. *Denver & R. G. R. R. v. Teufel*, 64 Colo. 515, 172 P. 1060 (1918).

40-9-104. Violation - penalty. Any common carrier subject to the provisions of sections 40-9-101 to 40-9-105, or, whenever such common carrier is a corporation, any director or officer thereof or any receiver, trustee, lessee, agent, or person acting for or employed by such corporation, or any shipper, consignee, or applicant for cars who alone or with any other corporation, company, person, or party willfully does or causes to be done or willfully suffers or permits to be done any act, matter, or thing prohibited by sections 40-9-101 to 40-9-105 or declared to be unlawful or who aids or abets therein, or willfully omits or fails to do any act, matter, or thing required to be done in said sections, or aids or abets any such omission or failure, or is guilty of any infraction of said sections, or aids or abets therein, or fails or refuses or neglects to obey any order of the commission made under the provisions of said sections is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars for each offense.

Source: L. 07: p. 535, § 9. R.S. 08: § 5453. L. 10: p. 50, § 9. C.L. § 2986. CSA: C. 29, § 9. CRS 53: § 115-12-4. C.R.S. 1963: § 115-12-4.

40-9-105. Diligence in transporting - penalty for failure. (1) It is the duty of every common carrier to transport all shipments between points in this state with the utmost diligence and to move perishable products toward their destination continuously without unnecessary delays or longer stops than regular stops at stations or stops for icing or

watering and at a minimum speed of not less than ten miles per hour; but excessive storms, unavoidable accidents, or damage to roadbeds which delay such shipments beyond the power of the common carrier to immediately overcome shall exempt such common carrier from compliance with the minimum speed limit, until such storms subside or such damage can be expeditiously repaired.

(2) For failure of any common carrier to receive and transport such shipments with the utmost diligence, such common carrier issuing the receipt or bill of lading therefor shall pay to the owner, consignee, or other interested party whose interests may appear, such actual damages as the owner, consignee, or other interested party may sustain, and the same may be sued for and be recovered in any court of competent jurisdiction in the district in which the plaintiff resides.

Source: L. 07: p. 544, § 26. R.S. 08: § 5470. L. 10: p. 62, § 25. C.L. § 2996. CSA: C. 29, § 19. CRS 53: § 115-12-5. C.R.S. 1963: § 115-12-5.

ANNOTATION

Section has been held not unconstitutional as a delegation of legislative power. Colo. & S. Ry. v. State R. R. Comm'n, 54 Colo. 64, 129 P. 506 (1912).

The prime purpose of this provision is to impose upon a railroad company, in its capacity

as a common carrier, the duty to afford shippers reasonable facilities for the transportation of property without unnecessary delay. Colo. & S. Ry. v. State R. R. Comm'n, 54 Colo. 64, 129 P. 506 (1912).

40-9-106. Transportation of livestock - not less than ten miles per hour. Every common carrier in this state must transport livestock from the initial point of shipment in this state to the point of destination in this state at an average rate of speed of not less than ten miles an hour and within such time, from the hour of loading at the initial point to the hour of arrival at the destination, that the point of destination shall be reached in not more than one-tenth as many hours as there were miles required to be traveled in the transportation of such shipment; except only that necessary stops of reasonable duration for feeding purposes, when required by the length of the journey, or necessary and imperative delays caused only by an act of God or inevitable accident shall not be computed in determining such minimum requirements as to speed.

Source: L. 21: p. 163, § 1. C.L. § 2997. CSA: C. 29, § 20. CRS 53: § 115-12-6. C.R.S. 1963: § 115-12-6.

ANNOTATION

Application of section. This section may be applicable to one or more railroads but may be inapplicable and unconstitutional as to another, which because of the location of its road and difficulties attending its operation, cannot with due regard to the safety of its employees and duty to the public, comply with its provisions. Freeman v. Boyer Bros., 82 Colo. 509, 261 P. 864 (1927).

Imposition of time limit is in exercise of police power. While the imposition of a time

limit for the transportation of livestock by carriers is well within the police power of the state, an unreasonable exercise of that power, culminating in a statute, may not be enforced, although the general subject matter of the legislation comes within the scope of the power. Freeman v. Boyer Bros., 82 Colo. 509, 261 P. 864 (1927).

40-9-107. Damages for failure to comply. For failure of any common carrier to transport any such shipment within the time required by section 40-9-106, the common carrier issuing the receipt or bill of lading shall pay to the owner, consignee, or other interested party whose interest may appear such actual damages as the owner, consignee, or other interested party may sustain, together with exemplary damages in a sum of not less than one hundred dollars nor more than one thousand dollars, to be fixed by the jury or by

the court if the cause is tried without a jury, and such actual and exemplary damages may be sued for and recovered in any court of competent jurisdiction in the district in which the plaintiff resides.

Source: L. 21: p. 163, § 2. C.L. § 2998. CSA: C. 29, § 21. CRS 53: § 115-12-7. C.R.S. 1963: § 115-12-7.

ANNOTATION

Plaintiff required only to make prima facie case of damages. In an action against a carrier by a shipper of livestock, for damages alleged to have been occasioned by failure to transport the stock within the time limit prescribed by the section preceding, it is held that the plaintiff was

required only to make out a prima facie case of damages, after which defendants had the burden of establishing the only defense interposed, viz., unconstitutionality of the statute. *Freeman v. Boyer Bros.*, 82 Colo. 509, 261 P. 864 (1927).

40-9-108. Accidents - notice - investigation. (1) Every railroad, whenever an accident attended by bodily injury or loss of human life occurs in this state on its line of road or on its ground or in its yards, shall give immediate written notice thereof to the public utilities commission. In the event of any such accident, the commission, if it deems the public interest to require it, shall cause a suitable investigation to be made forthwith and shall give written notice thereof to the person and railroad primarily interested.

(2) The expense of such investigation shall be certified by a majority of the commission and shall be audited and paid by the state in the same manner as other expenses are audited and paid. The commission is empowered to make and enforce such rules as, in its judgment, will tend to prevent accidents in the operation of the railroads of this state.

Source: L. 07: p. 544, § 27. R.S. 08: § 5471. L. 10: p. 63, § 26. C.L. § 2999. CSA: C. 29, § 22. CRS 53: § 115-12-8. C.R.S. 1963: § 115-12-8. L. 69: p. 963, § 74.

Cross references: For employer's duty to keep a record of injuries received by employees as well as the duty to report those injuries to the division of labor, see § 8-43-101.

40-9-109. Transportation of dogs accompanying blind and physically disabled persons. When a totally or partially blind, totally or partially deaf, or physically disabled person is accompanied by a dog which serves as an assistance dog or which is being trained by a qualified trainer as an assistance dog, as defined in section 24-34-803 (7), C.R.S., for such disabled person, neither the disabled person nor the dog shall be denied the facilities of any common carrier, nor shall such disabled person be denied the immediate custody of the dog while riding upon a common carrier. The provisions of this section shall also apply to any qualified trainer who is training a dog for use by a totally or partially blind, totally or partially deaf, or physically disabled person, unless the dog presents an imminent danger to the public health or safety. Such disabled person or any qualified trainer who is training a dog for use by a disabled person shall be liable for any damage done to the premises or facilities of the common carrier by such dog. Any dog being trained for the purpose of aiding a disabled person shall be visibly and prominently identified as an assistance dog in training.

Source: L. 41: p. 343, § 1. CSA: C. 29, § 21(1). CRS 53: § 115-12-9. C.R.S. 1963: § 115-12-9. L. 86: Entire section amended, p. 935, § 2, effective March 20. L. 89: Entire section amended, p. 1045, § 2, effective April 19. L. 2001: Entire section amended, p. 1282, § 62, effective June 5.

ARTICLE 9.5**Cooperative Electric Associations****PART 1****GENERALLY**

- 40-9.5-101. Legislative declaration.
 40-9.5-102. Definitions.
 40-9.5-103. Exemption from "Public Utilities Law".
 40-9.5-104. Procedure for exemption - election.
 40-9.5-105. Certificate of public convenience and necessity.
 40-9.5-106. Prohibited acts.
 40-9.5-107. Duties of cooperative electric associations.
 40-9.5-108. Public meetings.
 40-9.5-109. Regulations governing consumer complaints.
 40-9.5-109.5. Election policy - adoption - publication - contents.
 40-9.5-110. Board of directors of cooperative electric associations - nomination - elections.
 40-9.5-111. Notice of meeting - agenda.
 40-9.5-112. Provisions applicable to cooperative electric associations.
 40-9.5-113. Method of reimposing public utilities commission regulation.
 40-9.5-114. Public utilities commission - fees.
 40-9.5-114.5. Applicability of sections 40-9.5-108 to 40-9.5-112.
 40-9.5-115. Repeal of article. (Repealed)
 40-9.5-116. Investment in public-private transportation facilities.

- 40-9.5-117. Surcharge for underground conversion of facilities.
 40-9.5-118. Net metering - rules.

PART 2**SERVICE TERRITORIES WITHIN MUNICIPALITIES OWNING AND OPERATING ELECTRIC UTILITIES**

- 40-9.5-201. Legislative declaration.
 40-9.5-202. Definitions.
 40-9.5-203. Service rights and facilities of cooperative electric associations within municipalities or within areas to be annexed by municipalities which own and operate electric utilities.
 40-9.5-204. Just compensation for service rights and facilities by municipality.
 40-9.5-205. Purchase by cooperative electric association of electric distribution facilities and service rights of municipality.
 40-9.5-206. Provisions on purchase nonexclusive - no effect on existing contracts.
 40-9.5-207. Applicability.

PART 3**NET METERING FOR CUSTOMER-GENERATORS OF COOPERATIVE ELECTRIC ASSOCIATIONS**

- 40-9.5-301 to
 40-9.5-306. (Repealed)

PART 1**GENERALLY**

40-9.5-101. Legislative declaration. The general assembly hereby finds and declares that cooperative electric associations which are owned by the member-consumers they serve are regulated by the member-consumers themselves acting through an elected governing body. It is further declared that the regulation by the public utilities commission under the "Public Utilities Law", articles 1 to 7 of this title, may be duplicative of the self-regulation by the association and may be neither necessary nor cost-effective. It is therefore the purpose of this part 1 to determine the necessity of regulation by the public utilities commission by allowing cooperative electric associations to exempt themselves from regulation by the public utilities commission.

Source: L. 83: Entire article added, p. 1567, § 1, effective July 1. L. 86: Entire section amended, p. 1162, § 3, effective May 27.

40-9.5-102. Definitions. For the purposes of this part 1, “cooperative electric association” includes a nonprofit electric corporation or association but does not include nonprofit generation and transmission electric corporations or associations.

Source: **L. 83:** Entire article added, p. 1567, § 1, effective July 1. **L. 86:** Entire section amended, p. 1162, § 4, effective May 27.

40-9.5-103. Exemption from “Public Utilities Law”. Except as otherwise provided in this part 1, the provisions of the “Public Utilities Law”, articles 1 to 7 of this title, shall not apply to cooperative electric associations which have, by an affirmative vote of the members and consumers pursuant to section 40-9.5-104, voted to exempt themselves from such provisions and to be subject to the provisions of this part 1. The period of exemption shall begin on the date the election results are filed with the public utilities commission.

Source: **L. 83:** Entire article added, p. 1567, § 1, effective July 1. **L. 86:** Entire section amended, p. 1162, § 5, effective May 27.

40-9.5-104. Procedure for exemption - election. (1) (a) The board of directors of each cooperative electric association may, at its option, submit the question of its exemption from the “Public Utilities Law”, articles 1 to 7 of this title, to its members and its consumers. Approval by a majority of those voting in the election shall be required for such exemption.

(b) The board of directors of the cooperative electric association shall be responsible for mailing the ballots to all members and consumers of the association, for counting the returned ballots, and for determining the result of the election and shall also be responsible for insuring that the election is not held in a dishonest, corrupt, or fraudulent manner. The ballot shall contain the following language:

“Shall (name of the cooperative electric association) be exempt from regulation by the public utilities commission of the state of Colorado?

() Yes () No”

(c) The ballot must be postmarked or returned in an envelope accompanying the ballot with return postage paid within thirty days after it was mailed to the member or consumer.

(d) The results of the election held pursuant to this subsection (1) shall be certified by the secretary of the board of directors of the cooperative electric association no later than sixty days after the ballots are mailed to the members and consumers, and said secretary shall file the results with the director of the public utilities commission.

(2) Upon an affirmative vote of the members and consumers of the cooperative electric association on the question of exempting said association, the association shall be exempt from the “Public Utilities Law”, articles 1 to 7 of this title, beginning on the date the election results are filed with the public utilities commission.

Source: **L. 83:** Entire article added, p. 1568, § 1, effective July 1. **L. 85:** (1)(a) amended, p. 1299, § 1, effective May 31. **L. 2003:** (1)(d) amended, p. 1707, § 23, effective May 14.

40-9.5-105. Certificate of public convenience and necessity. (1) A certificate of public convenience and necessity issued by the public utilities commission prior to July 1, 1983, assigning specific service territories to a cooperative electric association shall remain in full force and effect and shall be subject to such rights and limitations as other certificates of public convenience and necessity held by other electric public utilities subject to regulation of the public utilities commission.

(2) After giving simultaneous notice by certified mail to other electric public utilities serving areas adjacent to an unserved, uncertificated territory and to the public utilities commission of its intent to extend service, a cooperative electric association shall have the right to extend service into such unserved, uncertificated territory unless the public utilities

commission receives a complaint concerning such extension. Such complaint must be received by the commission no later than thirty days following the commission's receipt of the notice of extension. Upon the filing of a complaint, the commission shall determine whether to issue a certificate of public convenience and necessity authorizing such extension.

(3) Whenever the public utilities commission, after a hearing upon complaint, finds that an electric public utility, including a cooperative electric association, is unwilling or unable to serve an existing or newly developing load within its certificated territory and that the public convenience and necessity requires a change, said commission may, in its discretion, delete from the certificate of said public utility or association that portion of said territory which the public utility or association is unwilling or unable to serve and incorporate said territory into the certificated territory of another electric public utility, including another cooperative electric association, upon such terms as are just and reasonable, having due regard to due process of law and to all the rights of the respective parties and to public convenience and necessity.

(4) Upon complaint filed by an electric public utility, including a cooperative electric association, the public utilities commission shall determine whether any construction or extension made or proposed to be made by another such public utility or association will interfere with or duplicate the line, plant, system, or service of the complainant, in which event the public utilities commission may make such order prohibiting such construction or extension or prescribing the terms and conditions thereof as to it may seem just and reasonable.

(5) The provisions of articles 6 and 7 of this title shall apply to any proceeding of the public utilities commission required by this section.

(6) Except as otherwise provided in this part 1, the enactment of this part 1 shall neither enlarge nor diminish the rights and obligations of electric public utilities, including cooperative electric associations, under certificates of public convenience and necessity issued by the public utilities commission. Nothing in this part 1 shall enlarge or diminish the respective rights and obligations of electric public utilities, including cooperative electric associations, or municipalities under franchise or other contractual agreements.

Source: L. 83: Entire article added, p. 1568, § 1, effective July 1. L. 85: (2) amended, p. 1301, § 3, effective April 5. L. 86: (6) amended, p. 1162, § 6, effective May 27.

40-9.5-106. Prohibited acts. (1) No cooperative electric association shall make a change in any rate charged for electric service or in any rule or regulation in connection therewith unless such association shall provide public notice of such proposed change at least thirty days prior to the day the proposed change is to take effect.

(2) No cooperative electric association, as to rates, charges, service, or facilities or as to any other matter, shall make or grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage. No cooperative electric association shall establish or maintain any unreasonable difference as to rates, charges, service, or facilities or as to any other matter, either between localities or between any class of service. Notwithstanding section 40-6-108 (1) (b), any complaint arising out of this subsection (2) signed by one or more customers of such association shall be resolved by the public utilities commission in accordance with the hearing and enforcement procedures established in articles 6 and 7 of this title. A cooperative electric association may approve any reasonable rate, charge, service, classification, or facility that establishes a graduated rate for increased energy consumption, for energy conservation and energy efficiency purposes, by residential customers that is revenue-neutral for the class, where revenue includes margins, expenses, riders, or charges as approved by the cooperative electric association. The implementation of such rate, charge, service, classification, or facility by a cooperative electric association shall not be deemed to subject any person or corporation to any prejudice, disadvantage, or undue discrimination. In adopting such rate, a cooperative electric association shall give due consideration to the impact of such rates on low-income customers. A cooperative electric association may utilize a community energy fund as contemplated by section 40-2-127 for energy efficiency, energy conservation,

weatherization, and renewable energy purposes. A cooperative electric association shall not apply such rate to consumers that have single meters that record energy consumption for combined residential and agricultural uses.

(3) No rates, charges, rules, or regulations of a cooperative electric association shall be unjust or unreasonable. Any complaint under this subsection (3) shall be resolved by the public utilities commission in accordance with the hearing and enforcement procedures established in articles 6 and 7 of this title if the complaint alleging a violation is signed by the mayor, the president or chairman of the board of trustees, or a majority of the council, commission, or other legislative body of an affected county, city and county, city, or town, an affected public utility, or any one or more affected entities constituting a separate rate class of the association or is signed by not less than twenty-five customers or prospective customers of such association.

Source: L. 83: Entire article added, p. 1569, § 1, effective July 1. L. 2009: (2) amended, (SB 09-039), ch. 175, p. 777, § 2, effective August 5.

40-9.5-107. Duties of cooperative electric associations. (1) Cooperative electric associations shall provide reasonably continuous and adequate electric utility service to all members and consumers within their certificated service areas.

(2) Cooperative electric associations shall provide and maintain reasonably adequate facilities for the provision of electric utility service within their certificated service areas.

(3) All cooperative electric associations shall cooperate with each other and with other electric utilities in avoiding unnecessary construction of facilities and cooperate in the joint use of facilities for generation, transmission, and distribution of electric energy.

(4) Cooperative electric associations shall construct and maintain their facilities in a careful and safe fashion so as to minimize hazards to either persons or property.

(5) Cooperative electric associations shall continue to file with the public utilities commission those items required by sections 40-2-111, 40-3-110, and 40-5-106 (2) and shall comply with section 40-2-124 (3) and (4). The records and accounts of cooperative electric associations shall be kept in accordance with procedures established by the commission pursuant to section 40-4-111.

(6) If a cooperative electric association has an immediate shutoff policy, such association shall have provisions for an immediate appeal of such policy to the board of directors.

(7) The board of directors of a cooperative electric association shall adopt all necessary rules and regulations to comply with the provisions of this part 1.

(8) Any conflict arising out of this section shall be resolved by the public utilities commission in accordance with the hearing procedures established in article 6 of this title.

Source: L. 83: Entire article added, p. 1570, § 1, effective July 1. L. 86: (7) amended, p. 1162, § 7, effective May 27; (5) amended, p. 1223, § 38, effective May 30. L. 2005: (5) amended, p. 239, § 3, effective August 8.

ANNOTATION

The statutory identification of the duties listed in this section does not limit powers extraneous to such duties. In interpreting this section, consideration shall be given to the entire statutory scheme including § 40-9.5-112 that states that the provisions of article 55 of title 7 apply to cooperative electric associations. Such article allows a cooperative to engage in any lawful activity except banking, therefore, the plaintiff's contention that a nonprofit coopera-

tive electric association is not authorized to form and invest in two for-profit, non-electric subsidiaries is invalid. *Bontrager v. La Plata Elec. Ass'n*, 68 P.3d 555 (Colo. App. 2003).

The general assembly did not intend to limit cooperative electric associations to providing only electric services. *Bontrager v. La Plata Elec. Ass'n*, 68 P.3d 555 (Colo. App. 2003).

40-9.5-108. Public meetings. (1) All meetings of a cooperative electric association are declared to be open meetings and open to the members, consumers, and news media at

all times; but such association, by a two-thirds affirmative vote of the board members present, may go into executive session for consideration of documents or testimony given in confidence, but such association shall not make final policy decisions or adopt or approve any resolution, rule, regulation, or formal action, any contract, or any action calling for the payment of money at any session which is closed to the members, consumers, and news media.

(2) (a) Before the board of directors convenes in executive session, the board shall announce the general topic of the executive session.

(b) At every regular meeting of the board of directors, members of the association shall be given an opportunity to address the board on any matter concerning the policies and business of the association. The board may place reasonable, viewpoint-neutral restrictions on the amount and duration of public comment.

(c) Written minutes shall be made of all meetings of the board of directors. The minutes shall be posted on the web site of the association as soon as they have been approved and shall remain posted until at least six months after the date of the meeting. Upon request by a member of the board, that member's own vote on any issue shall be noted in the minutes.

(3) Any action taken contrary to the provisions of this section shall be null and void and without force or effect.

Source: L. 83: Entire article added, p. 1570, § 1, effective July 1. L. 2010: (2) amended, (HB 10-1098), ch. 424, p. 2194, § 1, effective August 11.

40-9.5-109. Regulations governing consumer complaints. The board of directors of each cooperative electric association shall adopt regulations which specify a procedure for members and consumers to register complaints about and be given an opportunity to be heard by the board on the rates charged by such association, the manner in which the electric service is provided, and proposed changes in the rates or regulations. Such regulations may be amended whenever deemed appropriate by the board.

Source: L. 83: Entire article added, p. 1570, § 1, effective July 1. L. 85: Entire section amended, p. 1299, § 3, effective May 31. L. 93: Entire section amended, p. 2072, § 34, effective July 1.

40-9.5-109.5. Election policy - adoption - publication - contents. (1) The board of directors of each cooperative electric association shall adopt a written policy governing the election of directors. The election policy shall be posted on the association's web site. The election policy shall contain true and complete information on the following subjects:

(a) The procedure and timing for a member to become a candidate for the board of directors and the process by which elections for the board of directors are held;

(b) The qualifications for candidates and requirements for appearing on the ballot;

(c) The date of the election, which shall be fixed, posted on the association's web site, and otherwise publicized no less than six months before the election.

(2) In addition to the posting required in subsection (1) of this section, information on how to become a candidate and the schedule for elections shall be communicated to each member in a mailing and on the association's web site no less than two months before petitions to become a candidate are due.

(3) The ballot mailing deadline shall be posted on the web site at least three months before the deadline and shall remain so posted until after the election.

Source: L. 2010: Entire section added, (HB 10-1098), ch. 424, p. 2194, § 2, effective August 11.

40-9.5-110. Board of directors of cooperative electric associations - nomination - elections. (1) (a) A nomination for director on the board of directors of a cooperative electric association may be made by written petition signed by at least fifteen members of such association, and filed with the board of directors of such association no later than

forty-five days prior to the date of the election. Any petition so filed shall designate the name of the nominee and the term for which nominated. The name of a nominee shall appear on the ballot if the nominating petition is in apparent conformity with this section as determined by the secretary of the board. Nomination and election of directors by districts, if provided for in the bylaws of the association, shall be permitted.

(b) Candidates for positions on the board of directors shall be entitled to receive membership lists, in a usable format, on the same basis and at the same time as such lists are made available to incumbent directors running for reelection. Candidates shall use such lists only for purposes of the election and shall return or destroy them immediately after the election.

(c) All board members shall make available to association members some means for direct contact, whether by telephone, electronic mail, or regular mail. Information on how to contact each board member by one or more of these methods shall be available on the association web site.

(2) (a) (I) Each member of the association shall be entitled to vote in the election of directors on the board of directors either at a meeting held for such purpose or by mail, but not both. A member who has voted by mail shall not be entitled to vote at the meeting.

(II) Mail voting shall be in writing on ballots provided by the association. The mail ballot shall be voted by the member, placed in a special envelope provided for the purpose so as to conceal the marking on the ballot, deposited in a return envelope which must be signed by the voting member, and mailed back to the association.

(b) The order of names on the ballot shall be determined randomly in a manner that does not automatically assign the top line to the incumbent.

(c) The board of directors shall, when practicable, arrange for an independent third party to oversee the storage and counting of ballots. If this is not practicable, then ballots shall be collected and stored in a manner that protects the privacy of their content. All candidates for the board of directors shall be given the opportunity to be present to observe their tabulation.

(3) Voting for directors on the board of directors by proxy or cumulative voting is prohibited.

(4) Neither the association nor the board of directors shall endorse or oppose the candidacy of an incumbent board member or other candidate for a position on the board. During the two months immediately preceding the election, board members shall not send individual newsletters using the association's resources.

Source: L. 83: Entire article added, p. 1571, § 1, effective July 1. **L. 85:** (2) amended, p. 1302, § 4, effective April 5. **L. 2010:** Entire section amended, (HB 10-1098), ch. 424, p. 2195, § 3, effective August 11.

40-9.5-111. Notice of meeting - agenda. (1) Notice of the time and place of a meeting of the board of directors and a copy of the agenda for such meeting shall be posted in every service office maintained by the association at least ten days before the meeting. The agenda shall specifically designate the issues or questions to be discussed, or the actions to be taken, at the meeting. Copies of the agenda shall be available at each service office for members and consumers.

(2) The date, time, location, and agenda of every meeting of the board of directors shall be posted on the association's web site no less than ten days before the meeting in the case of regular meetings and as soon as the meeting is scheduled in the case of special meetings. If a meeting is postponed or cancelled, notice of the postponement or cancellation shall immediately be posted on the web site.

Source: L. 83: Entire article added, p. 1571, § 1, effective July 1. **L. 2010:** Entire section amended, (HB 10-1098), ch. 424, p. 2196, § 4, effective August 11.

40-9.5-112. Provisions applicable to cooperative electric associations. Except as otherwise provided in this part 1, the provisions of article 55 of title 7, C.R.S., shall apply

to cooperative electric associations. In the case of any irreconcilable conflict between said article and this part 1, this part 1 shall control. Section 40-4-105 shall apply to cooperative electric associations with respect to crossing of railroad rights-of-way.

Source: **L. 83:** Entire article added, p. 1571, § 1, effective July 1. **L. 86:** Entire section amended, p. 1163, § 8, effective May 27. **L. 2002:** Entire section amended, p. 1948, § 4, effective June 8. **L. 2010:** Entire section amended, (HB 10-1098), ch. 424, p. 2197, § 5, effective August 11.

Cross references: For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 350, Session Laws of Colorado 2002.

40-9.5-113. Method of reimposing public utilities commission regulation. Any cooperative electric association may vote no more than once a year to place said association under the regulation of the public utilities commission, as provided in the “Public Utilities Law”, articles 1 to 7 of this title. Said question shall only be submitted to the member-consumers of the association if at least five percent of the member-consumers of the association sign a petition requesting such an election and if such signatures are gathered within a six-month period immediately preceding the submission of the petition to the association’s board of directors. No petition circulated pursuant to this section shall be valid unless the petition sponsor notifies the board in writing prior to circulation for signatures. Such petition shall be submitted to, and signatures certified by, the board at a regular scheduled meeting. Such certification shall include a determination as to whether the signatures on the petition were gathered within a six-month period immediately preceding the submission of the petition to the board. After the petition has been certified by the board, the commission shall conduct an election within forty-five days on the question. If a majority of the persons voting at the election vote in favor of placing their association under commission regulation, the commission shall reassert its regulation upon determination of the election results.

Source: **L. 83:** Entire article added, p. 1571, § 1, effective July 1. **L. 85:** Entire section amended, p. 1302, § 5, effective April 5. **L. 2005:** Entire section amended, p. 330, § 1, effective April 20.

40-9.5-114. Public utilities commission - fees. No cooperative electric association which has voted to exempt itself from the “Public Utilities Law”, articles 1 to 7 of this title, and to be subject to the provisions of this part 1 shall be required to pay to the public utilities commission the fees imposed by the provisions of article 2 of this title; except that, for any year in which the commission is required, pursuant to section 40-9.5-105 or 40-9.5-113, to act with respect to an exempt cooperative electric association, such exempt association shall pay to the commission actual and necessary costs not to exceed twenty-five percent of the fees that it would have been liable for under the provisions of article 2 of this title if regulated by the commission.

Source: **L. 83:** Entire article added, p. 1572, § 1, effective July 1. **L. 85:** Entire section amended, p. 1304, § 1, effective April 30. **L. 86:** Entire section amended, p. 1163, § 9, effective May 27.

40-9.5-114.5. Applicability of sections 40-9.5-108 to 40-9.5-112. The provisions of sections 40-9.5-108 to 40-9.5-112 shall be applicable to all cooperative electric associations with membership of more than twenty-five thousand members whether regulated under this part 1 or the “Public Utilities Law”, articles 1 to 7 of this title.

Source: **L. 85:** Entire section added, p. 1299, § 2, effective May 31. **L. 86:** Entire section amended, p. 1163, § 10, effective May 27. **L. 93:** Entire section amended, p. 2072, § 35, effective July 1.

40-9.5-115. Repeal of article. (Repealed)

Source: **L. 83:** Entire article added, p. 1572, § 1, effective July 1. **L. 85:** Entire section repealed, p. 1303, § 6, effective April 5.

40-9.5-116. Investment in public-private transportation facilities. (1) Notwithstanding any provision of law to the contrary, the board of directors of a cooperative electric association may consider investing in one or more of the following:

- (a) Any public-private initiative with the department of transportation, as defined in section 43-1-1201 (3), C.R.S.;
- (b) Bonds issued for turnpikes in accordance with part 2 of article 3 of title 43, C.R.S.;
- (c) Repealed.
- (d) Any other public-private initiative program for transportation system projects in Colorado authorized by law.

(2) The board of directors of a cooperative electric association may give preference to the investments described in subsection (1) of this section if such investments are in the interest of the cooperative electric association's members and are consistent with sound investment policy.

Source: **L. 98:** Entire section added, p. 446, § 8, effective August 5. **L. 2005:** (1)(c) repealed, p. 289, § 41, effective August 8.

Cross references: For the legislative declaration contained in the 1998 act enacting this section, see section 1 of chapter 154, Session Laws of Colorado 1998.

40-9.5-117. Surcharge for underground conversion of facilities. The board of directors of a cooperative electric association may adopt a resolution to impose a surcharge on those consumers within the service area of the cooperative electric association who derive a direct benefit from the conversion of overhead electric and communication facilities to underground locations. Such surcharge shall be limited to costs related to the conversion of overhead electric and communication facilities to underground locations.

Source: **L. 99:** Entire section added, p. 373, § 3, effective April 22.

40-9.5-118. Net metering - rules. (1) **Definitions.** For purposes of this section, unless the context otherwise requires:

- (a) "Customer-generator" means an end-use electricity customer that generates electricity on the customer's side of the meter using eligible energy resources.
- (b) "Eligible energy resources" has the meaning established in section 40-2-124.
- (2) Each cooperative electric association shall allow a customer-generator's retail electricity consumption to be offset by the electricity generated from eligible energy resources on the customer-generator's side of the meter that are interconnected with the facilities of the cooperative electric association, subject to the following:

(a) **Monthly excess generation.** If a customer-generator generates electricity in excess of the customer-generator's monthly consumption, all such excess energy, expressed in kilowatt-hours, shall be carried forward from month to month and credited at a ratio of one to one against the customer-generator's energy consumption, expressed in kilowatt-hours, in subsequent months.

(b) **Annual excess generation.** Within sixty days after the end of each annual period, or within sixty days after the customer-generator terminates its retail service, the cooperative electric association shall account for any excess energy generation, expressed in kilowatt-hours, accrued by the customer-generator and shall credit such excess generation to the customer-generator in a manner deemed appropriate by the cooperative electric association.

(c) **Nondiscriminatory rates.** A cooperative electric association shall provide net metering service at nondiscriminatory rates.

(d) **Interconnection standards.** A cooperative electric association and a customer-generator shall comply with the interconnection standards and insurance requirements established in the rules promulgated by the public utilities commission pursuant to section 40-2-124; except that the cooperative electric association may reduce or waive any of the insurance requirements, and except that the public utilities commission shall initiate a rule-making proceeding no later than October 1, 2008, for the purpose of addressing cooperative electric association system issues in its small generator interconnection procedures. A cooperative electric association shall not prevent or unreasonably burden the installation of a net metering system if such system includes protective equipment that prevents any export of customer-generated electricity from the customer's side of the meter.

(e) (I) **Size specifications.** Each cooperative electric association shall allow:

(A) Residential customer-generators to generate electricity subject to net metering up to ten kilowatts; and

(B) Commercial or industrial customer-generators to generate electricity subject to net metering up to twenty-five kilowatts.

(II) Each cooperative electric association may allow customer-generators to generate electricity subject to net metering in amounts in excess of the minimum amounts specified in subparagraph (I) of this paragraph (e). If the cooperative electric association denies interconnection to a customer-generator that has requested interconnection of a system with a capacity of twenty-five kilowatts or larger, the association shall provide a written technical or economic explanation of such denial to the customer.

(3) The cooperative electric association and the customer-generator shall indemnify, defend, and save the other party harmless from any and all damages, losses, or claims, including claims and actions relating to injury to or death of any person or damage to property, demand, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from the other party's action or failure to act in relation to any obligations under this section, except in cases of gross negligence or intentional wrongdoing by the indemnified party.

Source: L. 2008: Entire section added, p. 188, § 2, effective August 5.

PART 2

SERVICE TERRITORIES WITHIN MUNICIPALITIES OWNING AND OPERATING ELECTRIC UTILITIES

40-9.5-201. Legislative declaration. The general assembly hereby finds and declares that the provisions of article XXV of the Colorado constitution allow the public utilities commission to establish exclusive service territories for utilities as provided in article 5 of this title and that it has been the policy of the state of Colorado to establish exclusive service territories for cooperative electric associations. The general assembly further finds and declares that, if a cooperative electric association has been granted an exclusive service territory that is within a municipality that operates an electric utility or within an area annexed by a municipality that operates an electric utility, the municipality has taken private property and shall pay just compensation for the electric distribution facilities and certificate of public convenience and necessity of the association located within the municipality. Therefore, it is declared to be a matter of statewide concern and to be the purpose of this part 2 to establish a procedure to be followed when the certificated service territory of a cooperative electric association is included within a municipality that operates an electric utility or within an area annexed by a municipality that operates an electric utility.

Source: L. 86: Entire part added, p. 1159, § 1, effective May 27.

40-9.5-202. Definitions. As used in this part 2, unless the context otherwise requires:

(1) "Cooperative electric association" shall have the same meaning as in section 40-9.5-102.

(2) "Electric distribution facilities" means all or any portion of the electric lines and facilities of a cooperative electric association used or capable of being used in serving ultimate consumers, but the term does not include transmission lines, feeder lines, and substation facilities, or portions thereof, which are necessary for the integration and operation of portions of the association's electric system which are located outside a municipality or the area annexed by a municipality, nor does the term include transformers, meters, and associated metering equipment.

(3) "Municipality" means a statutory or home rule town, city, or city and county.

Source: L. 86: Entire part added, p. 1160, § 1, effective May 27.

40-9.5-203. Service rights and facilities of cooperative electric associations within municipalities or within areas to be annexed by municipalities which own and operate electric utilities. (1) Notwithstanding any provision to the contrary, if a cooperative electric association has certificated service territory within a municipality which after May 27, 1986, commences operation of its own electric utility or has certificated service territory within an area annexed after May 27, 1986, by a municipality which owns and operates an electric utility, the municipality shall pay just compensation for the electric distribution facilities of the cooperative electric association located within the territory, together with the association's certificate of public convenience and necessity constituting its rights to serve such territory.

(2) No later than thirty days prior to final action on each annexation ordinance, the municipality shall notify the affected cooperative electric association in writing of the boundaries of the municipality or the annexed area within which certificated service territory of the association is included and shall indicate such boundaries or area on appropriate maps.

Source: L. 86: Entire part added, p. 1160, § 1, effective May 27.

40-9.5-204. Just compensation for service rights and facilities by municipality. (1) The just compensation for electric distribution facilities and service rights shall be:

(a) The present-day reproduction cost, new, of the electric distribution facilities being acquired, less depreciation computed on a straight-line basis over thirty-five years with such depreciation being limited to one-half of such cost; and

(b) An amount equal to the cost of constructing any necessary facilities to reintegrate the system of the cooperative electric association located outside the municipality or the area annexed by the municipality after detaching the electric distribution facilities to be sold; and

(c) An annual amount, payable each year for a period of ten years following the date of purchase, equal to twenty-five percent of the revenues received by the municipality from the sale of electric power to the services within such municipality which were previously served by the cooperative electric association; and

(d) An annual amount equal to five percent of the revenues received by the municipality from the sale of electric power to the additional services that come into existence in the affected area, for each year for a period of ten years following the date of acquisition.

(2) If the cooperative electric association and the municipality cannot agree on the amount to be paid pursuant to subsection (1) of this section, either party may bring an action for condemnation or inverse condemnation in the district court for the county in which the property is located to determine the amount to be paid pursuant to the factors stated in subsection (1) of this section. During the pendency of any such action, the municipality shall deposit with the court the amount the municipality has offered to be paid the cooperative electric association, and, upon said payment, the municipality shall have the right to serve all electric customers within the annexed area.

Source: L. 86: Entire part added, p. 1160, § 1, effective May 27.

ANNOTATION

Statutory scheme set forth in §§ 40-9.5-201 to 40-9.5-207 is not unconstitutional since such sections do not mandate that a public utility transfer all its customers and facilities to a municipality upon a notice of annexation by the municipality. Thus, there may not be a taking under the statutory scheme which would otherwise preclude regulation by the P.U.C. in such areas. This section, which provides for situations where the municipality can compete with the public utility, does not conflict with section 35 of article V of the state constitution. Nor does

the statutory scheme violate section 25 of article V prohibiting special legislation or section 15 of article II governing just compensation for takings of property for public use. *Poudre Valley Rural Elec. v. Loveland*, 807 P.2d 547 (Colo. 1991).

“Revenues” under paragraph (c) of subsection (1) means both the base charge and usage charge received by the municipality. *Poudre Valley Rural Elec. v. Loveland*, 807 P.2d 547 (Colo. 1991).

40-9.5-205. Purchase by cooperative electric association of electric distribution facilities and service rights of municipality. If any municipality changes its boundaries so as to exclude from its corporate limits any territory previously served by a cooperative electric association, such municipality shall give, within thirty days, written notice to the association of such exclusion of territory, and the cooperative electric association, within one hundred twenty days after receipt of such notice, shall purchase the municipality's electric distribution facilities and service rights within the excluded area. Section 40-9.5-204 shall apply to acquisitions by a cooperative electric association pursuant to this section.

Source: L. 86: Entire part added, p. 1161, § 1, effective May 27.

40-9.5-206. Provisions on purchase nonexclusive - no effect on existing contracts. (1) Nothing contained in this part 2 shall prohibit a municipality and a cooperative electric association from buying, selling, or exchanging electric distribution facilities, service rights, and other rights, property, and assets by mutual agreement.

(2) Nothing in this part 2 shall impair the obligations of existing contracts.

Source: L. 86: Entire part added, p. 1161, § 1, effective May 27.

ANNOTATION

Statute reflects legislative intent to articulate and affirm state policy that a municipality may purchase the service rights and facilities of

cooperative public utilities. *City of Colo. Springs v. Mountain View Elec. Ass'n, Inc.*, 925 P.2d 1378 (Colo. App. 1995).

40-9.5-207. Applicability. (1) This part 2 shall apply to all cooperative electric associations which have electric distribution facilities, franchises, certificates of public convenience and necessity, rights-of-way, or appurtenances to facilities which are included in the boundaries of a municipality which after May 27, 1986, commences operation of its own electric utility or are included in an area annexed by a municipality which owns and operates an electric utility.

(2) Notwithstanding any statutory provision to the contrary, the procedures in this part 2 relating to the allocation and conveyance of property and property rights of any cooperative electric association to any municipality or of any municipality to any cooperative electric association shall be exclusively available to such municipality and to such cooperative electric association.

Source: L. 86: Entire part added, p. 1161, § 1, effective May 27.

PART 3

NET METERING FOR CUSTOMER-GENERATORS
OF COOPERATIVE ELECTRIC ASSOCIATIONS**40-9.5-301 to 40-9.5-306. (Repealed)**

Source: L. 2008: Entire part repealed, p. 188, § 1, effective August 5.

Editor's note: This part 3 was added in 2002. For amendments to this part 3 prior to its repeal in 2008, consult the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

ARTICLE 9.7

Colorado Clean Energy
Development Authority**40-9.7-101 to 40-9.7-123. (Repealed)**

Source: L. 2012: Entire article repealed, (HB 12-1315), ch. 224, p. 984, § 55, effective July 1.

Editor's note: This article was added in 2007. For amendments to this article prior to its repeal in 2012, consult the 2011 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

Motor Carriers and Intrastate Telecommunications Services

ARTICLE 10

Motor Vehicle Carriers

40-10-101 to 40-10-120. (Repealed)

Source: L. 2011: Entire article repealed, (HB 11-1198), ch. 127, p. 416, § 2, effective August 10.

Editor's note: This article was numbered as article 9 of chapter 115, C.R.S. 1963. For amendments to this article prior to its repeal in 2011, consult the 2010 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

Cross references: For current provisions concerning common carriers, see article 10.1 of this title.

ARTICLE 10.1

Motor Carriers

Editor's note: This article is similar to former articles 10, 11, 13, 14, and 16 of this title as they existed prior to 2011. For a detailed comparison, see the comparative tables located in the back of the index.

PART 1

GENERAL PROVISIONS

- 40-10.1-101. Definitions.
- 40-10.1-102. Powers of commission.
- 40-10.1-103. Subject to control by commis-
sion.
- 40-10.1-104. Compliance.
- 40-10.1-105. Transportation not subject to
regulation.
- 40-10.1-106. Commission to make rules and
prescribe rates.
- 40-10.1-107. Financial responsibility - filing.
- 40-10.1-108. Commission to make safety
rules.
- 40-10.1-109. Motor carrier compliance with
safety rules.
- 40-10.1-110. Criminal history record check.
- 40-10.1-111. Filing, issuance, and annual
fees - repeal.
- 40-10.1-112. Commission may take action
against certificate or permit.
- 40-10.1-113. Penalty for violations.
- 40-10.1-114. Penalty for violation of article.
- 40-10.1-115. Jurisdiction of courts.
- 40-10.1-116. Commission to notify local au-
thorities - procedure.

PART 2

MOTOR CARRIERS OF PASSENGERS -
COMMON CARRIERS AND CONTRACT
CARRIERS

- 40-10.1-201. Certificate required.
- 40-10.1-202. Permit required - legislative
declaration.
- 40-10.1-203. Rules for issuance of certificate
- standing to protest - judicial
review.

- 40-10.1-204. Temporary authority.
- 40-10.1-205. Transfer of certificate or per-
mit.
- 40-10.1-206. Rates - limitations.
- 40-10.1-207. Taxicab license plates - rules.

PART 3

MOTOR CARRIERS OF PASSENGERS -
LIMITED REGULATION

- 40-10.1-301. Definitions.
- 40-10.1-302. Permit requirements.
- 40-10.1-303. Livery license plates - rules.

PART 4

MOTOR CARRIERS OF TOWED MOTOR
VEHICLES

- 40-10.1-401. Permit requirements.
- 40-10.1-402. Verification of authority - no-
tice of requirement for desig-
nated license plates - rules -
repeal.

PART 5

MOTOR CARRIERS OF HOUSEHOLD
GOODS

- 40-10.1-501. Definitions.
- 40-10.1-502. Permit requirements - issuance
by ports of entry.
- 40-10.1-503. Enforcement of carrier's lien.
- 40-10.1-504. Advertising.
- 40-10.1-505. Contracts for service.
- 40-10.1-506. Delivery and storage of house-
hold goods.
- 40-10.1-507. Binding arbitration.

PART 1

GENERAL PROVISIONS

40-10.1-101. Definitions. As used in this article, unless the context otherwise requires:

- (1) "Advertise" means to advise, announce, give notice of, publish, or call attention to by use of any oral, written, or graphic statement made in a newspaper or other publication, on radio, television, or any electronic medium, or contained in any notice, handbill, sign, including signage on a vehicle, flyer, catalog, or letter, or printed on or contained in any tag or label attached to or accompanying any article of personal property.
- (2) "Certificate" means the certificate of public convenience and necessity issued to a common carrier under part 2 of this article.
- (3) "Commission" means the public utilities commission of the state of Colorado.
- (4) "Common carrier" means a common carrier as defined in section 40-1-102; except that the term does not include a contract carrier as defined in this section or a motor carrier of passengers under part 3 of this article.
- (5) "Compensation" means any money, property, service, or thing of value charged or received or to be charged or received, whether directly or indirectly.
- (6) "Contract carrier" means every person, other than a common carrier or a motor

carrier of passengers under part 3 of this article, who, by special contract, directly or indirectly affords a means of passenger transportation over any public highway of this state.

(7) “Fixed points” and “established route” mean points or a route between or over which any common carrier usually or ordinarily operates or holds out to operate any motor vehicle, even though there may be departures from such points or route, whether such departures are periodic or irregular.

(8) “Household goods” means the personal effects and property used or to be used in a dwelling, when a part of the equipment or supply of such dwelling, and similar property if the transportation of such effects and property is:

(a) Arranged and paid for by the householder; except that “household goods” does not include property moving from a factory or store, other than property that the householder has purchased with intent to use in his or her dwelling and that is transported at the request of, and the transportation charges are paid to the mover by, the householder; or

(b) Arranged and paid for by another party.

(9) “Intrastate commerce” means transportation for compensation by motor vehicles over the public highways between points in this state.

(10) “Motor carrier” means any person owning, controlling, operating, or managing any motor vehicle that provides transportation in intrastate commerce pursuant to this article.

(11) “Motor vehicle” means any automobile, truck, tractor, motor bus, or other self-propelled vehicle or any trailer drawn thereby.

(12) “Mover” means a motor carrier that provides the transportation or shipment of household goods.

(13) “Nonconsensual towing” or “nonconsensual tow” means the transportation of a motor vehicle by tow truck if such transportation is performed without the prior consent or authorization of the owner or operator of the motor vehicle.

(14) “Permit” means the permit issued to a contract carrier under part 2 of this article or to a motor carrier under part 3, 4, or 5 of this article.

(15) “Person” means any individual, firm, partnership, corporation, company, association, joint stock association, or other legal entity and any person acting as or in the capacity of lessee, trustee, or receiver thereof, whether appointed by a court or otherwise.

(16) “Public highway” means every street, road, or highway in this state over which the public generally has a right to travel.

(17) “Shipper” means a person who uses the services of a mover to transport or ship household goods.

(18) “Taxicab” means a motor vehicle with a seating capacity of eight or less, including the driver, operated in taxicab service.

(19) “Taxicab service” means passenger transportation in a taxicab on a call-and-demand basis, with the first passenger therein having exclusive use of the taxicab unless such passenger agrees to multiple loading.

(20) “Towing carrier” means a motor carrier that:

(a) Provides, as one of its primary functions, the towing of motor vehicles by use of a tow truck; and

(b) May also provide storage of towed vehicles.

(21) “Tow truck” means a motor vehicle specially designed or equipped for transporting another motor vehicle by means of winches, cables, pulleys, or other equipment for towing, pulling, or lifting such other motor vehicle from one place to another.

Source: L. 2011: Entire article added, (HB 11-1198), ch. 127, p. 395, § 1, effective August 10.

ANNOTATION

Law reviews. For article, “Control Over Motor Carriers by the Public Utilities Commission”, see 33 Dicta 138 (1956).

Annotator’s note. Cases material to this section decided prior to its earliest source, L. 27, p. 499, § 1, have been included in the annotations

to this section. Since § 40-10.1-101 is similar to §§ 40-10-101 and 40-11-101 as they existed prior to the 2011 reorganization of the motor carrier statutes, relevant cases construing those sections have been included in the annotations to this section.

This article is constitutional. *Bushnell v. People*, 92 Colo. 174, 19 P.2d 197 (1933); *Pub. Utils. Comm'n v. DeLue*, 175 Colo. 317, 486 P.2d 1050 (1971).

Legislative intent in establishing several types of motor vehicle transportation. The general assembly established several types of motor vehicle transportation, including common and contract carriage. By doing so, without question it intended to protect the public health, safety, and general welfare by providing a framework for the better transportation of persons and property. *Denver Cleanup Serv. Inc. v. Pub. Utils. Comm'n*, 192 Colo. 537, 561 P.2d 1252 (1977).

This statute was enacted for the purpose of regulating any detrimental effect that contract carriers might have upon common carrier operation. *Pub. Utils. Comm'n v. Stanton Transp. Co.*, 153 Colo. 372, 386 P.2d 590 (1963); *Pub. Utils. Comm'n v. DeLue*, 175 Colo. 317, 486 P.2d 1050 (1971).

Contract carriers remain outside scope of regulation. This article was enacted for the regulation of motor vehicle carriers, but the act does not encompass private carriers. Private carriers remain outside the scope of regulation. *Burbridge v. Pub. Utils. Comm'n*, 91 Colo. 134, 12 P.2d 1115 (1932); *Pub. Utils. Comm'n v. Stanton Transp. Co.*, 153 Colo. 372, 386 P.2d 590 (1963).

Neither the general assembly nor the commission has precisely defined contract carriage. *Miller Bros. v. Pub. Utils. Comm'n*, 185 Colo. 414, 525 P.2d 443 (1974).

One may look in vain in the statutes or in the rulings of the commission and of the supreme court for a clear definition of contract carriage or for an articulation of specific guidelines to be followed in the issuance of a contract carrier permit. *Denver Cleanup Serv., Inc. v. Pub. Utils. Comm'n*, 192 Colo. 537, 561 P.2d 1252 (1977).

The fundamental distinction between a common and contract carrier is that the contract carrier enters into a contract with each of his customers and assumes no obligation to carry for any other, while the common carrier undertakes to carry for all persons indifferently. *Ward Transp. Inc. v. Pub. Utils. Comm'n*, 151 Colo. 76, 376 P.2d 166 (1962).

The principal statutory distinction between the two is that a contract carrier is one which is not a common carrier. *Denver Cleanup Serv., Inc. v. Pub. Utils. Comm'n*, 192 Colo. 537, 561 P.2d 1252 (1977).

One of the fundamental distinctions between a contract carrier and a common carrier is that a

contract carrier has an obligation only to his contract-customers and has no obligation to others desiring carriage. In contrast, the common carrier must convey for all desiring its transportation. *Denver Cleanup Serv., Inc. v. Pub. Utils. Comm'n*, 192 Colo. 537, 561 P.2d 1252 (1977).

A motor vehicle carrier cannot at the same time be both a contract carrier and a common carrier by utilizing one part of a truck for common-carrier service and another part of the same truck for contract-carrier service. Such a holding would make regulatory power ridiculous. *McKay v. Pub. Utils. Comm'n*, 104 Colo. 402, 91 P.2d 965 (1939).

Situation in which carrier is neither common nor private or contract. A milk company that transports all the milk it produces to its processing plant, f.o.b. at the producers' stations is neither a common carrier nor a private or contract carrier for hire, because it then hauls only its own property. *Colo. Milk Transp., Inc. v. Safeway Stores, Inc.*, 269 F.2d 755 (10th Cir. 1959).

Indiscriminately accepting freight is undoubtedly one of the important tests in ascertaining whether or not a certain operation has the elements of a common carrier. *Greeley Transp. Co. v. People*, 79 Colo. 307, 245 P. 720 (1926); *Burbridge v. Pub. Utils. Comm'n*, 91 Colo. 134, 12 P.2d 1115 (1932); *Bushnell v. People*, 92 Colo. 174, 19 P.2d 197 (1933); *McDill v. North E. Motor Freight, Inc.*, 92 Colo. 198, 19 P.2d 204 (1933); *McKay v. Pub. Utils. Comm'n*, 104 Colo. 402, 91 P.2d 965 (1939); *Ward Transp., Inc. v. Pub. Utils. Comm'n*, 151 Colo. 76, 376 P.2d 166 (1962).

Carrier who does not accept freight for hire indiscriminately is not a common carrier. A motor vehicle operator engaged in the transportation of freight for hire under contracts with various individuals is not a common carrier because he does not hold himself out as willing to, and does not in fact, accept freight for transportation for hire indiscriminately for all who might or did seek such service. *Ward Transp., Inc. v. Pub. Utils. Comm'n*, 151 Colo. 76, 376 P.2d 166 (1962).

By legislative mandate, contract carriers are public utilities. *Pub. Utils. Comm'n v. Stanton Transp. Co.*, 153 Colo. 372, 386 P.2d 590 (1963).

Authority as to contract carriers is solely statutory. The commission's authority over common carriers stems from both the constitution and the statutes, while its authority with respect to contract motor carriers is solely statutory. *Miller Bros. v. Pub. Utils. Comm'n*, 185 Colo. 414, 525 P.2d 443 (1974).

There is agreement as to certain characteristics. While the definition of contract carriage has never been clarified by legislation or the commission, there is general agreement as to certain contract carriage characteristics: (1) A

contract carrier cannot serve the general public; (2) a contract carrier cannot participate in the formal rate-making process of the commission; and (3) a contract carrier cannot interline. Also, a contract carrier may not advertise in any newspaper, magazine, or other publication or otherwise hold itself out to serve the public indiscriminately. *Miller Bros. v. Pub. Utils. Comm'n*, 185 Colo. 414, 525 P.2d 443 (1974).

"Contract" means in the interest of the individual, as distinguished from enterprise or business operated by or on behalf of the public, or of any official function performed for public benefit. *Colo. Contractors Ass'n v. Pub. Utils. Comm'n*, 128 Colo. 333, 262 P.2d 266 (1953).

Contract carriage not declared public utility. The general assembly has declared that a "common carrier" is a "public utility". However, contract carriage has not been so declared. *Miller Bros. v. Pub. Utils. Comm'n*, 185 Colo. 414, 525 P.2d 443 (1974).

A contract carrier provides service at its convenience and subject to the negotiation of a satisfactory agreement between the private carrier and its customer. *Pub. Utils. Comm'n v. DeLue*, 175 Colo. 317, 486 P.2d 1050 (1971).

Example of contract carrier. A motor vehicle operator engaged in the transportation of freight for hire under contracts with various individuals is not a common carrier because he does not hold himself out as willing to, and does not in fact, accept freight for transportation for hire indiscriminately for all who might or did seek such service. *Ward Transp., Inc. v. Pub. Utils. Comm'n*, 151 Colo. 76, 376 P.2d 166 (1962).

Test used in determining whether applicant is contract carrier held invalid. *Denver Cleanup Serv., Inc. v. Pub. Utils. Comm'n*, 192 Colo. 537, 561 P.2d 1252 (1977).

A guideline of the public utilities commission (PUC) requiring that, to be considered a contract carrier, the proposed service must be beyond the capabilities of an authorized common carrier in effect grants a monopoly to common carriers, eliminating the need for contract carriage except under too limited circumstances. *Denver Cleanup Serv., Inc. v. Pub. Utils. Comm'n*, 192 Colo. 537, 561 P.2d 1252 (1977).

The guidelines used by the commission in determining whether an applicant is to be considered a contract carrier promote too strongly the demise of contract carriers, and since the legislative purpose negates a result that either class be obliterated by the commission's fiat, it follows that the commission's test violates legislative intent and purpose. *Denver Cleanup Serv., Inc. v. Pub. Utils. Comm'n*, 192 Colo. 537, 561 P.2d 1252 (1977).

Guidelines to be considered by commission. *Denver Cleanup Serv., Inc. v. Pub. Utils. Comm'n*, 192 Colo. 537, 561 P.2d 1252 (1977).

The constitution and the statutes of this state have given to the business of trash hauling the status of a matter of statewide concern, subject to the jurisdiction of the PUC. Under such circumstances, a city has no power to pass an ordinance that is in conflict with the exercise by the commission of its statutory power. *Givigliano v. Veltri*, 180 Colo. 10, 501 P.2d 1044 (1972).

"Property" embraces matter removed to dumps. The word "property" as applied to the act is intended to and does embrace the transportation for hire of matter and things that the parties remove from various households and establishments and haul to nearby dumps. *Schlagel v. Hoelsken*, 162 Colo. 142, 425 P.2d 39, cert. denied, 389 U.S. 827, 88 S. Ct. 81, 19 L. Ed. 2d 83 (1967).

Right of property exists in refuse material until it is destroyed. Although the owner of refuse materials may regard them as of no value, still the right to their possession and the need for their disposal are within the control of the individual owner. All of these materials have certain valuable uses under varied circumstances, and even though the owner desires to dispose of or destroy such materials, the right of property continues until disposed of or destroyed. In performing such disposal service, appellant was clearly engaged in the business of a common carrier. *Schlagel v. Hoelsken*, 162 Colo. 142, 425 P.2d 39, cert. denied, 389 U.S. 827, 88 S. Ct. 81, 19 L. Ed. 2d 83 (1967).

Vehicles engaged in transporting trash are within meaning of section. The amendment of § 40-10-101 expressly to include in the definition of "motor vehicle carrier", as follows: "any motor vehicle used in serving the public in the business of transportation of ashes, trash, waste, rubbish, and garbage", did not change the law; it merely clarified it. *Schlagel v. Hoelsken*, 162 Colo. 142, 425 P.2d 39, cert. denied, 389 U.S. 827, 88 S. Ct. 81, 19 L. Ed. 2d 83 (1967).

This section applies to common carriers, that is one whose business occupation or regular calling is to carry chattels for all persons who may choose to employ and remunerate him. *Bushnell v. People*, 92 Colo. 174, 19 P.2d 197 (1933).

Those who merely secure passengers desiring to make trips as paying guests for private parties planning motor vehicle trips are not functioning as a public utility warranting regulation by the commission. *Yellow Cab Coop. Ass'n v. Colo. Ground Transp. Center, Inc.*, 654 P.2d 1331 (Colo. App. 1982).

Section applies to all persons operating privately for hire. The statute does not attempt to include one class of motor vehicle operators for hire and exclude another class also transporting for hire; it includes all persons operating pri-

vately for hire. *Bushnell v. People*, 92 Colo. 174, 19 P.2d 197 (1933).

This article does not include one who transports his or her own goods in his or her own vehicle from one place to another on the public highways and sells the same for a profit. *People v. Montgomery*, 92 Colo. 201, 19 P.2d 205 (1933).

As to what "interlining" consists of, see *Miller Bros. v. Pub. Utils. Comm'n*, 185 Colo. 414, 525 P.2d 443 (1974).

Factors relevant in determining an applicant's fitness and ability to perform under a permit are discussed in *Acme Delivery Serv. v. Cargo Freight Sys.*, 704 P.2d 839 (Colo. 1985).

Applied in *Pub. Utils. Comm'n v. Weicker Transp. Co.*, 102 Colo. 211, 78 P.2d 633 (1938); *Northwest Transp. Serv., Inc. v. Pub. Utils. Comm'n*, 197 Colo. 437, 593 P.2d 1366 (1979); *Morey v. Pub. Utils. Comm'n*, 629 P.2d 1061 (Colo. 1981).

40-10.1-102. Powers of commission. (1) The commission has the power to and shall administer and enforce this article, including the right to inspect the motor vehicles, facilities, and records and documents, regardless of the format, of the motor carriers and persons involved.

(2) The Colorado state patrol has the power to monitor and enforce compliance with the certificate and permit requirements of this article and article 10.5 of this title.

Source: **L. 2011:** Entire article added, (HB 11-1198), ch. 127, p. 397, § 1, effective August 10. **L. 2012:** (2) amended, (HB 12-1019), ch. 135, p. 465, § 7, effective July 1.

ANNOTATION

Jurisdiction is expressly conferred on the commission by this section. *Eveready Freight Serv., Inc. v. Pub. Utils. Comm'n*, 131 Colo.

172, 280 P.2d 442 (1955) (decided prior to 2011 reorganization of motor carrier statutes).

40-10.1-103. Subject to control by commission. (1) All common carriers and contract carriers are declared to be public utilities within the meaning of articles 1 to 7 of this title and are declared to be affected with a public interest and subject to this article and articles 1 to 7 of this title, including the regulation of all rates and charges pertaining to public utilities, so far as applicable, and other laws of this state not in conflict therewith.

(2) Except as provided in subsection (1) of this section, motor carriers are not public utilities under this title, but are declared to be affected with a public interest and are subject to regulation to the extent provided in this article, in section 40-2-110.5, in article 6 of this title, and in article 7 of this title except sections 40-7-113.5, 40-7-116.5, and 40-7-117. The term "public utility", when used in articles 6 and 7 of this title, includes all motor carriers.

Source: **L. 2011:** Entire article added, (HB 11-1198), ch. 127, p. 397, § 1, effective August 10.

ANNOTATION

Annotator's note. Since § 40-10.1-103 is similar to § 40-10-102 as it existed prior to the 2011 reorganization of the motor carrier statutes, relevant cases construing that section have been included in the annotations to this section.

The general assembly has declared that a "common carrier" is a "public utility". *Miller Bros. v. Pub. Utils. Comm'n*, 185 Colo. 414, 525 P.2d 443 (1974).

Contract carriage has not been so declared. *Miller Bros. v. Pub. Utils. Comm'n*, 185 Colo. 414, 525 P.2d 443 (1974).

The commission's authority over common carriers stems from both the constitution and the statutes, while its authority with respect to contract motor carriers is solely statutory. *Miller Bros. v. Pub. Utils. Comm'n*, 185 Colo. 414, 525 P.2d 443 (1974).

Jurisdiction is expressly conferred on the commission by this section. *Eveready Freight Serv., Inc. v. Pub. Utils. Comm'n*, 131 Colo. 172, 280 P.2d 442 (1955).

Those who merely secure passengers desiring to make trips as paying guests for private

parties planning motor vehicle trips are not functioning as a public utility warranting regulation by the commission. *Yellow Cab Coop. Ass'n v. Colo. Ground Transp. Center, Inc.*, 654

P.2d 1331 (Colo. App. 1982).

Applied in *Givigliano v. Veltri*, 180 Colo. 10, 501 P.2d 1044 (1972).

40-10.1-104. Compliance. A person shall not operate or offer to operate as a motor carrier in this state except in accordance with this article.

Source: L. 2011: Entire article added, (HB 11-1198), ch. 127, p. 398, § 1, effective August 10.

ANNOTATION

Annotator's note. Since § 40-10.1-104 is similar to § 40-10-103 as it existed prior to the 2011 reorganization of the motor carrier statutes, relevant cases construing that section have been included in the annotations to this section.

The streets of a city are highways of the state. *Armstrong v. Johnson Storage & Moving Co.*, 84 Colo. 142, 268 P. 978 (1928).

Injunction may issue to prohibit operation of motor vehicles as carriers for compensation

on public highways without proper authority so to do under pertinent state statutes. *Kimble v. People*, 92 Colo. 197, 19 P.2d 208 (1933); *Ludlow v. People*, 92 Colo. 195, 19 P.2d 210 (1933).

Jurisdiction is expressly conferred on the commission by this section. *Eveready Freight Serv., Inc. v. Pub. Utils. Comm'n*, 131 Colo. 172, 280 P.2d 442 (1955).

40-10.1-105. Transportation not subject to regulation. (1) The following types of transportation are not subject to regulation under this article:

- (a) A ridesharing arrangement, as defined in section 39-22-509 (1) (a) (II), C.R.S.;
- (b) The transportation of children to and from school, school-related activities, and school-sanctioned activities to the extent that such transportation is provided by a school or school district or the school or school district's transportation contractors;
- (c) A private individual who transports a neighbor or friend on a trip;
- (d) Transportation by hearses, ambulances, or other emergency vehicles;
- (e) Transportation by motor vehicles designed and used for the nonemergency transportation of individuals with disabilities as defined in section 42-7-510 (2) (b), C.R.S.;
- (f) An amusement ride consisting of a towed vehicle that is incapable of operating under its own power, the principal purpose of which is to carry individuals over short distances for their enjoyment and by which the provision of a transportation service is only incidental;
- (g) People service transportation and volunteer transportation pursuant to article 1.1 of this title;
- (h) Transportation by vehicles operated upon fixed rails;
- (i) Transportation of property, except transportation provided by a towing carrier or a mover;
- (j) Transportation performed by the federal government, a state, or any agency or political subdivision of either, whether through an intergovernmental agreement, contractual arrangement, or otherwise; and
- (k) Transportation of repossessed property by a secured creditor or assignee, or by a reposessor on behalf of a secured creditor or assignee, when repossessing pursuant to section 4-9-629, C.R.S.

Source: L. 2011: Entire article added, (HB 11-1198), ch. 127, p. 398, § 1, effective August 10.

ANNOTATION

To be exempt from the provisions of this article, motor vehicles must be designed to

transport individuals confined to wheelchairs, and actually must be used solely to transport

such individuals. *Black Hawk-Central City Ace Express, Inc. v. Entrup*, 983 P.2d 9 (Colo. App.

1998) (decided prior to 2011 reorganization of motor carrier statutes).

40-10.1-106. Commission to make rules and prescribe rates. (1) The commission has the authority and duty to prescribe such reasonable rules covering the operations of motor carriers as may be necessary for the effective administration of this article, including rules on the following subjects:

(a) Ensuring public safety, financial responsibility, consumer protection, service quality, and the provision of services to the public;

(b) The circumstances under which a towing carrier may perform a nonconsensual tow of a motor vehicle, the responsibilities and facilities of the towing carrier for the care or storage of the motor vehicle and its contents, and the minimum and maximum rates and charges to be collected by the towing carrier for the nonconsensual towing and storage of the motor vehicle. In setting the rates and charges pursuant to this section, the commission may require towing carriers performing nonconsensual tows to submit financial statements or other financial information to determine the costs associated with the performance of nonconsensual towing and any motor vehicle storage incident thereto.

(c) The administration of the fingerprint-based criminal history record checks required by section 40-10.1-110.

Source: L. 2011: Entire article added, (HB 11-1198), ch. 127, p. 399, § 1, effective August 10.

ANNOTATION

- I. General Consideration.
- II. Prescription of Rules and Regulations.
- III. Prescription of Rates.

I. GENERAL CONSIDERATION.

Annotator's note. Since § 40-10.1-106 is similar to §§ 40-11-105 and 40-13-107 as they existed prior to the 2011 reorganization of the motor carrier statutes, relevant cases construing those sections have been included in the annotations to this section.

Legislative intent is clear, that the authorization of contract carriers shall not be detrimental, within the limits of the law, to common-carrier operation, and that motor transportation be coordinated in such a way as to preserve common-carrier operation and not to impair the integrity of state regulation of common-carrier service. *McKay v. Pub. Utils. Comm'n*, 104 Colo. 402, 91 P.2d 965 (1939).

Applied in *Pollard Contracting Co. v. Pub. Utils. Comm'n*, 644 P.2d 7 (Colo. 1982).

II. PRESCRIPTION OF RULES AND REGULATIONS.

The public utilities commission (PUC) has broad constitutional and statutory authority. However, the breadth of that authority is to be tested by the statutes themselves and not by the unbridled whim of the commission. The commission is a creature of statute. Both the power and scope of its authority and its procedures are necessarily controlled by the act upon which it

relies. *Pub. Utils. Comm'n v. Colo. Motorway, Inc.*, 165 Colo. 1, 437 P.2d 44 (1968).

Commission must comply with "procedural due process". The PUC, in a general investigation held for the purpose of promulgating rules and regulations, cannot, regardless of the type of evidence that may be presented to it, revoke, amend, or alter permits or certificates of participating parties. It must comply with the statutory procedural requirements which would legally justify the end sought to be accomplished, issue a notice, hold a hearing at which the respondent is given an opportunity to defend itself, and finally, enter its decision in accordance with the evidence. Anything less will not satisfy the statute nor that quality of fairness required by "procedural due process". *Pub. Utils. Comm'n v. Colo. Motorway, Inc.*, 165 Colo. 1, 437 P.2d 44 (1968).

Request for records authorized by rule under this section was not an unconstitutional warrantless search. The PUC therefore could assess a civil penalty for the carrier's refusal to produce the records. *Eddie's Leaf Spring v. Pub. Utils. Comm'n*, 218 P.3d 326 (Colo. 2009).

Commission authorized to deny application for transfer of permit. When § 40-11-103 and this section are read together, and in light of the general public policy of the law to protect common carriers, it is apparent that denial of an application for transfer of a permit is within the PUC's regulatory authority. *Mobile Pre-Mix Transit, Inc. v. Pub. Utils. Comm'n*, 618 P.2d 663 (Colo. 1980).

The PUC may properly deny a transfer of a contract carrier's permit wherever there is a

substantial opportunity for a transferee, because of its advantageous position in the industry, to discriminate or compete unfairly. *Mobile Pre-Mix Transit, Inc. v. Pub. Utils. Comm'n*, 618 P.2d 663 (Colo. 1980).

Finding of actual intent unnecessary for denial. It is not necessary that the PUC find actual intent before it may deny a transfer of a contract carrier's permit. *Mobile Pre-Mix Transit, Inc. v. Pub. Utils. Comm'n*, 618 P.2d 663 (Colo. 1980).

Carrier should not be denied certificate merely for prior unlawful conduct unless that unlawful conduct reached the level of intentional or reckless violations of the PUC's rules and regulations. *Mobile Pre-Mix Transit, Inc. v. Pub. Utils. Comm'n*, 618 P.2d 663 (Colo. 1980).

Once having granted one or even several waivers of its rules, the PUC was not bound to continue to grant waivers, the approval of which is more a matter of grace than of right. *B & M Serv., Inc. v. Pub. Utils. Comm'n*, 163 Colo. 228, 429 P.2d 293 (1967).

The emergency letters permitted by PUC rules governing contract motor vehicle carriers are improperly used when they enable another company to set up a transportation service for which it had no authority. *Rumney v. Pub. Utils. Comm'n*, 172 Colo. 314, 472 P.2d 149 (1970).

When determining whether a contract carrier is offering distinctly different or superior service to that offered by an authorized common carrier, the commission may consider a contract carrier's ancillary, nontransportation services. *Ace West Trucking v. Pub. Utils. Comm'n*, 788 P.2d 755 (Colo. 1990).

No lien on personal property in a towed vehicle. The rules of the PUC governing towing carriers cannot be interpreted to grant or impose a lien upon personal property in a towed motor vehicle when the vehicle is removed from public property. *Jam Action, Inc. v. Colo. State Patrol*, 890 P.2d 210 (Colo. App. 1994).

Condition that towing carriers must agree to release personal property items inside a towed vehicle to the owner before payment of any accrued charges in order to be on a rotation towing list of the Colorado state patrol does not conflict with the PUC's authority to license and regulate towing carriers and does not supersede the exercise of the constitutional and statutory authority granted to the PUC nor abrogate its action. *Jam Action, Inc. v. Colo. State Patrol*, 890 P.2d 210 (Colo. App. 1994).

Standard on review. Determination by the PUC of whether a substantial opportunity for discrimination or unfair competition exists should not be disturbed unless it is unsupported by competent evidence or is arbitrary and capricious. *Mobile Pre-Mix Transit, Inc. v. Pub. Utils. Comm'n*, 618 P.2d 663 (Colo. 1980).

III. PRESCRIPTION OF RATES.

Commission's duty to adopt rates. It is of particular significance that the general assembly in this section not only granted power and authority but also made it the commission's duty to adopt rates. *Consolidated Freightways Corps. v. Pub. Utils. Comm'n*, 158 Colo. 239, 406 P.2d 83 (1965).

Section not applicable unless contract carrier competing with common carrier in rendering substantially same service. If a contract carrier is not competing with a common carrier and if the former is not rendering a service substantially the same or similar to that of the common carrier, then the terms and provisions of subsection (2) do not come into play and the tariff filed with the PUC is lawful, even though calling for rates less than those of the common carrier. *Denver-Climax Truck Line v. Jim Chelf, Inc.*, 167 Colo. 69, 445 P.2d 399 (1968).

Rules by commission which establish the manner in which the minimum rate for a contract carrier competing with a common carrier is to be determined, which require a contract carrier competing with any scheduled common carrier to file a tariff of rates and charges not less than the lowest rate prescribed for any competing common carrier providing substantially the same or similar service, and which authorize the commission to change any tariff or rate of any contract carrier competing with a motor vehicle common carrier providing substantially the same or similar service, are consistent with the doctrine of regulated competition and are in accord with the commission's statutory authority to prescribe minimum rates for contract carriers not less than the rates prescribed for common carriers providing substantially the same or similar service. *Regular Rt. Com. Carrier Conf. v. Pub. Utils. Comm'n*, 761 P.2d 737 (1988).

Rates to protect public and prevent destructive rate-making. The commission has been charged with the duty to carry out its mission in two areas, to wit: To protect the public and to prevent destructive rate-making which could result in nonavailability of the service to the public. *Consolidated Freightways Corps. v. Pub. Utils. Comm'n*, 158 Colo. 239, 406 P.2d 83 (1965).

Duty to prescribe rates for contract carriers tied to same duty for common carriers. Reading this section it would be impossible for the commission to carry out a duty to prescribe minimum rates for contract carriers if it established no rates for common carriers. The one duty is tied in with the other, and the prescribed rates for one class are the basis for the minimum rates for the other. *Consolidated Freightways Corps. v. Pub. Utils. Comm'n*, 158 Colo. 239, 406 P.2d 83 (1965).

Fairness of rate left to commission. The general assembly itself has declared the neces-

sity and the duty and left to the commission the determination of a rate that is fair to the public and sufficiently compensatory to the utility to ensure a fair return on its investment. Regulation—not nonregulation—has been declared to be in the public interest. Consolidated Freightways Corps. v. Pub. Utils. Comm’n, 158 Colo. 239, 406 P.2d 83 (1965).

Mandamus is proper only where there is a legal duty to perform the act requested. Where the PUC has no clear legal duty to reject

or annul the rates published, then until the PUC has determined that contract and common carriers are competing and that the services are substantially similar to those rendered by a competing common carrier, it has no duty to reject those rates, and no right to relief in the nature of mandamus in the trial court will lie. Denver-Laramie-Walden Truck Line v. Denver-Fort Collins Freight Serv., Inc., 156 Colo. 366, 399 P.2d 242 (1965).

40-10.1-107. Financial responsibility - filing. (1) Each motor carrier shall maintain and file with the commission evidence of financial responsibility in such sum, for such protection, and in such form as the commission may by rule require as the commission deems necessary to adequately safeguard the public interest.

(2) The financial responsibility required by subsection (1) of this section must be in the form of a liability insurance policy issued by an insurance carrier or insurer authorized to do business in this state, or a surety bond issued by a company authorized to do business in this state, or proof of self-insurance.

(3) An insurance policy, surety bond, or self-insurance pursuant to subsection (2) of this section shall be kept continuously effective during the life of a certificate or permit and the commission shall require such evidence of continued validity as the commission deems necessary.

(4) No termination of an insurance policy or surety bond is valid unless the insurer or surety has notified both the holder of the policy or bond and the commission at least thirty days before the effective date of the termination.

Source: L. 2011: Entire article added, (HB 11-1198), ch. 127, p. 399, § 1, effective August 10.

40-10.1-108. Commission to make safety rules. (1) The commission has the authority and duty to establish, for motor carriers subject to parts 2 and 3 of this article, reasonable rules to promote safety of operation.

(2) For the purpose of carrying out this section pertaining to safety, the commission may obtain the assistance of any agency of the United States or of this state having special knowledge of any matter necessary to promote the safety of operation and equipment of motor vehicles. In adopting such rules, the commission shall use as general guidelines the standards contained in the current rules and regulations of the United States department of transportation relating to safety regulations, qualifications of drivers, driving of motor vehicles, parts and accessories, recording and reporting of accidents, hours of service of drivers, and inspection and maintenance of motor vehicles.

Source: L. 2011: Entire article added, (HB 11-1198), ch. 127, p. 400, § 1, effective August 10.

40-10.1-109. Motor carrier compliance with safety rules. (1) A motor carrier subject to part 2 or 3 of this article shall comply with the safety rules adopted by the commission pursuant to section 40-10.1-108.

(2) A motor carrier operating a motor vehicle that is defined as a commercial vehicle in section 42-4-235 (1) (a), C.R.S., shall comply with the safety rules adopted by the department of public safety pursuant to section 24-33.5-203 (1) (b), C.R.S., in addition to the rules adopted by the commission under subsection (1) of this section.

(3) Nothing in subsection (1) or (2) of this section diminishes the authority of the commission, the department of public safety, a peace officer, or any other agent of government to enforce the laws of this state.

Source: L. 2011: Entire article added, (HB 11-1198), ch. 127, p. 400, § 1, effective August 10.

40-10.1-110. Criminal history record check. (1) An individual who wishes to drive either a taxicab for a motor carrier that is the holder of a certificate to provide taxicab service issued under part 2 of this article or a motor vehicle for a motor carrier that is the holder of a permit to operate as a charter bus, children's activity bus, luxury limousine, or off-road scenic charter under part 3 of this article shall submit a set of his or her fingerprints to the commission. The commission shall forward the fingerprints to the Colorado bureau of investigation for the purpose of obtaining a fingerprint-based criminal history record check. Upon receipt of fingerprints and payment for the costs, the Colorado bureau of investigation shall conduct a state and national fingerprint-based criminal history record check using records of the Colorado bureau of investigation and the federal bureau of investigation. The commission is the authorized agency to receive information regarding the result of a national criminal history record check. The individual whose fingerprints are checked shall pay the actual costs of the state and national fingerprint-based criminal history record check.

(2) An individual whose fingerprints are checked pursuant to subsection (1) of this section may, pending the results of the criminal history record check, drive such motor vehicles for the motor carrier described in subsection (1) of this section for up to ninety days after the commission forwards the fingerprints to the Colorado bureau of investigation or until the commission receives the results of the check, whichever occurs first. Upon the commission's receipt of the results, the individual may resume driving motor vehicles for the motor carrier described in subsection (1) of this section, so long as the driving does not violate applicable law and does not occur while the individual has a criminal conviction on his or her record that disqualifies and prohibits him or her from driving a motor vehicle pursuant to subsection (3) of this section.

(3) An individual whose criminal history record is checked pursuant to this section is disqualified and prohibited from driving motor vehicles for the motor carrier described in subsection (1) of this section if the criminal history record check reflects that:

(a) The individual is not of good moral character, as determined by the commission based on the results of the check;

(b) (I) The individual has been convicted of a felony or misdemeanor involving moral turpitude.

(II) As used in this paragraph (b), "moral turpitude" includes any unlawful sexual offense against a child, as defined in section 18-3-411, C.R.S., or a comparable offense in any other state or in the United States.

(c) Within the two years immediately preceding the date the criminal history record check is completed, the individual was:

(I) Convicted in this state of driving under the influence, as defined in section 42-4-1301 (1) (f), C.R.S.; driving with excessive alcoholic content, as described in section 42-4-1301 (2) (a), C.R.S.; driving while ability impaired, as defined in section 42-4-1301 (1) (g), C.R.S.; or driving while an habitual user of a controlled substance, as described in section 42-4-1301 (1) (c), C.R.S.; or

(II) Convicted of a comparable offense in any other state or in the United States.

(4) The commission shall consider the information resulting from the criminal history record check in its determination as to whether the individual has met the standards set forth in section 24-5-101 (2), C.R.S.

(5) An individual whose fingerprints were checked pursuant to subsection (1) of this section shall, as a condition of continued qualification to drive a motor vehicle for a motor carrier, resubmit a set of his or her fingerprints to the commission in accordance with the commission's rules.

(6) Each motor carrier described in subsection (1) of this section shall ensure driver compliance with this section and with commission rules promulgated pursuant to this section. Nothing in this subsection (6) makes a driver an employee of the motor carrier.

(7) The commission shall, consistent with the requirements of this section, promulgate rules concerning the employment of, contracting with, and retention of an individual whose criminal history record is checked pursuant to this section, and the frequency and circumstances requiring resubmission of fingerprints.

Source: L. 2011: Entire article added, (HB 11-1198), ch. 127, p. 400, § 1, effective August 10.

40-10.1-111. Filing, issuance, and annual fees - repeal. (1) A motor carrier shall pay the commission the following fees in amounts prescribed in this section or, if not so prescribed, as set administratively by the commission with approval of the executive director of the department of regulatory agencies:

(a) Except as otherwise provided in paragraph (b) of this subsection (1), the filing fee for an application for a temporary authority, certificate, or permit under part 2 of this article or for an extension, amendment, transfer, or lease of a temporary authority, certificate, or permit is thirty-five dollars, and the fee for issuance of a temporary authority, certificate, or permit under part 2 of this article is five dollars.

(b) The commission shall administratively set the filing fee for an application under part 2 of this article to provide taxicab service within and between the counties of Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, El Paso, and Jefferson.

(c) (I) The filing fee for a permit to operate under part 4 of this article is one hundred fifty dollars.

(II) (A) Notwithstanding subparagraph (I) of this paragraph (c), a towing carrier that filed proof of a surety bond as required by section 40-10.1-401 (3) before May 24, 2012, is exempt from the filing fee until the bond expires.

(B) This subparagraph (II) is repealed, effective July 1, 2014.

(d) The commission shall administratively set the annual filing fee for a permit to operate under part 5 of this article; except that the fee may not exceed three hundred twenty-five dollars.

(e) The filing fee for a temporary permit to operate as a mover pursuant to section 40-10.1-502 (5) (a) is one hundred fifty dollars.

(f) The commission shall administratively set the annual fee for each motor vehicle a motor carrier owns, controls, operates, or manages.

(2) Except for a mover holding a permit issued under part 5 of this article and a motor carrier that has paid a fee pursuant to article 10.5 of this title, a motor carrier shall not operate any motor vehicle in intrastate commerce unless the annual fees required by paragraph (f) of subsection (1) of this section have been paid. Such fees apply on a calendar year basis and are creditable only to the specific vehicles for which the fees have been paid.

(3) Administratively set fees must be based on the appropriation made for the purposes specified in section 40-2-110 (2) (a) (I), subject to the approval of the executive director of the department of regulatory agencies, such that the revenue generated from all motor carrier fees approximates the direct and indirect costs of the commission in the supervision and regulation of motor carriers.

(4) The commission shall transmit all fees collected under this section to the state treasurer, who shall credit them to the public utilities commission motor carrier fund created in section 40-2-110.5.

Source: L. 2011: Entire article added, (HB 11-1198), ch. 127, p. 402, § 1, effective August 10. L. 2012: (1)(c) amended, (HB 12-1327), ch. 217, p. 931, § 1, effective May 24.

Editor's note: Section 6 of chapter 217, Session Laws of Colorado 2012, provides that the act amending subsection (1)(c) applies to towing carriers that applied for permits on, before, or after May 24, 2012.

40-10.1-112. Commission may take action against certificate or permit. (1) Except as specified in subsection (3) of this section, the commission, at any time, by order duly

entered, after hearing upon notice to the motor carrier and upon proof of violation, may issue an order to cease and desist or may suspend, revoke, alter, or amend any certificate or permit issued to the motor carrier under this article for the following reasons:

(a) A violation of this article or of any term or condition of the motor carrier's certificate or permit;

(b) Exceeding the authority granted by a certificate or permit;

(c) A violation or refusal to observe any of the proper orders or rules of the commission;

(d) For a towing carrier, a violation of any of the provisions set forth in part 18 or 21 of article 4 of title 42, C.R.S., or a conviction, guilty plea, or plea of nolo contendere to a felony;

(e) For a mover, failure or refusal to abide by the terms of an arbitrator's award under section 40-10.1-507, or failure to satisfy the requirements for a new or renewed permit under section 40-10.1-502.

(2) Any person may file a complaint against a motor carrier for a violation of this article or a rule adopted under this article. The complainant may request any relief that the commission, in its authority, may grant, including an order to cease and desist, suspension or revocation of the motor carrier's certificate or permit, or assessment of civil penalties. Upon proof of violation, the commission may issue an order to cease and desist, suspend or revoke the motor carrier's certificate or permit, assess civil penalties as provided in article 7 of this title, or take any other action within the commission's authority. In assessing civil penalties under this subsection (2), the commission is not constrained by the procedural requirements of section 40-7-116.

(3) Notwithstanding the notice and hearing provisions of subsection (1) of this section, the commission shall summarily suspend the certificate or permit of any motor carrier for failure to maintain effective insurance or surety bond coverage and file evidence of the same in accordance with section 40-10.1-107 and rules adopted pursuant thereto. The commission shall reinstate such summarily suspended certificate or permit within a time period specified in, and in accordance with, the rules of the commission.

(4) A motor carrier whose certificate or permit has been revoked for cause more than twice is not eligible for another such certificate or permit for at least two years after the date of the third such revocation. In the case of an entity, the two-year period of ineligibility also applies to all principals, officers, and directors of the entity, whether or not any such principal, officer, or director applies individually or as a principal, officer, or director of the same or a different entity. As used in this subsection (4), "revoked for cause" does not include a revocation for failure to carry the required insurance unless it is shown that the person knowingly operated without insurance.

(5) Any commission action under subsection (1) or (2) of this section must conform to the provisions and procedures specified in article 6 of this title. The motor carrier has all the rights to the opportunity for a hearing, review, and appeal as to such order or ruling of the commission as are now provided by articles 1 to 7 of this title. No appeal from or review of any order or ruling of the commission supersedes or suspends such order or rulings unless specifically ordered by the proper court.

Source: L. 2011: Entire article added, (HB 11-1198), ch. 127, p. 403, § 1, effective August 10.

ANNOTATION

Annotator's note. Since § 40-10.1-112 is similar to §§ 40-10-112, 40-11-110, and 40-13-103 as they existed prior to the 2011 reorganization of the motor carrier statutes, relevant cases construing those sections have been included in the annotations to this section.

This section empowers the public utilities commission (PUC) to order a revocation or to alter or to amend a certificate of public con-

venience and necessity for a violation of its rules and regulations. *Colo. Transf. & Storage, Inc. v. Pub. Utils. Comm'n*, 180 Colo. 327, 505 P.2d 370 (1973).

Procedural due process requires that in addition to a fair and open hearing, there must be due notice and an opportunity to be heard, and the procedure must be consistent with the essentials of a fair trial, and the agency must act

upon evidence and not arbitrarily. Pub. Utils. Comm'n v. Colo. Motorway, Inc., 165 Colo. 1, 437 P.2d 44 (1968).

Facts determine what is proper notice. The question of what is proper notice, or, as here, of what constitutes a specific designation of the issue raised or charges made, depends necessarily upon the facts of each case, the type of investigation being conducted, the violation alleged, and the penalty or order sought to be imposed. Where the purpose of the investigation by the PUC is only to determine the reasonableness of rates charged by a utility, a different standard would seem to apply than where the franchise of the utility is sought to be revoked for violation of the utility laws and a penalty or fine imposed. Pub. Utils. Comm'n v. Colo. Motorway, Inc., 165 Colo. 1, 437 P.2d 44 (1968).

Authority to revoke permit. If the evidence supports a finding that the statutes governing the regulation of the particular carrier and the rules and regulations of the commission have in fact been violated, it is clear that the commission has the statutory authority to revoke the violator's PUC permit. Rumney v. Pub. Utils. Comm'n, 172 Colo. 314, 472 P.2d 149 (1970).

This section requires before revocation, alteration, or amendment of a private permit, a hearing after notice of alleged violations of law, rules, and regulations or the terms of the permit. Pub. Utils. Comm'n v. Colo. Motorway, Inc., 165 Colo. 1, 437 P.2d 44 (1968).

Commission cannot revoke a contract carrier permit without compliance with the notice and hearing provisions of this section. Red Ball Motor Freight, Inc. v. Pub. Utils. Comm'n, 185 Colo. 438, 525 P.2d 439 (1974).

Where the commission did not give notice or hold a hearing, it had no authority to revoke a contract carrier's certificate. Miller Bros. v. Pub.

Utils. Comm'n, 185 Colo. 414, 525 P.2d 443 (1974).

A hearing must be held before the commission can take administrative action regarding alteration of previously granted permits to provide contract carrier service. J.C. Trucking v. Pub. Utils. Comm'n, 776 P.2d 366 (Colo. 1989).

Cancellation of "occasional service" portion of carrier's certificate held no abuse of commission's discretion. Colo. Transf. & Storage, Inc. v. Pub. Utils. Comm'n, 180 Colo. 327, 505 P.2d 370 (1973).

The commission has no authority to impose a monetary fine as an alternative to revoking a permit or certificate. Haney v. Pub. Utils. Comm'n, 194 Colo. 481, 574 P.2d 863 (1978) (decided prior to amendment authorizing imposition of a civil penalty).

Right of review upon cancellation of certificate. The penalty ordered by the commission was that the carrier's certificate and permit be cancelled unless he elected to accept certain restrictions. The carrier had the right to have the propriety of the commission's decision, which includes findings and conclusions, as well as an order, reviewed by the courts and was not required to make an election until he has obtained such judicial review. Pub. Utils. Comm'n v. Tucker, 167 Colo. 130, 445 P.2d 901 (1968).

No property right to be on tow list. Towing carriers do not have an unqualified property right to be included on the rotation tow list of the Colorado state patrol by virtue of their permits issued as required by this section. Jam Action, Inc. v. Colo. State Patrol, 890 P.2d 210 (Colo. App. 1994).

Enforcement action against airport limousine service was subject to federal preemption and violated the commerce clause, art. 1, § 8, of the U.S. constitution. E. W. Resort Transp., LLC v. Binz, 494 F. Supp. 2d 1197 (D. Colo. 2007).

40-10.1-113. Penalty for violations. Any person who provides transportation in intrastate commerce without first obtaining a certificate or permit, violates any of the terms thereof, fails or refuses to make any return or report required by the commission, denies to the commission access to the books and records of such person, or makes any false return or report commits a misdemeanor and, upon conviction thereof, shall be punished as provided in section 40-10.1-114.

Source: L. 2011: Entire article added, (HB 11-1198), ch. 127, p. 404, § 1, effective August 10.

ANNOTATION

The failure of the commission to take action against one who exceeds the authority granted does not ripen into a grant of authority to carry on an illegal operation. McKenna v.

Nigro, 150 Colo. 335, 372 P.2d 744 (1962) (decided prior to 2011 reorganization of motor carrier statutes).

40-10.1-114. Penalty for violation of article. (1) Every motor carrier and every officer, agent, or employee of a motor carrier and every other person who violates or fails

to comply with or who procures, aids, or abets in the violation of this article, who fails to obey, observe, or comply with any order, decision, or rule of the commission adopted under this article, or who procures, aids, or abets any person in such failure to obey or observe such order, decision, or rule commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

(2) An individual who is employed by or who contracts with a motor carrier and who operates a motor vehicle for the motor carrier's business in violation of section 40-10.1-110 commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

(3) Each day of a continuing violation of this article constitutes a separate offense.

Source: L. 2011: Entire article added, (HB 11-1198), ch. 127, p. 404, § 1, effective August 10.

40-10.1-115. Jurisdiction of courts. The district court or, within its jurisdiction, the county court of any county in or through which a motor carrier operates has jurisdiction in all matters arising under this article on account of the operations of such motor carrier except as otherwise provided in this article and excepting those matters expressly delegated to the commission; and it is the duty of the district attorney for the county having jurisdiction to prosecute all violations of this article.

Source: L. 2011: Entire article added, (HB 11-1198), ch. 127, p. 404, § 1, effective August 10.

ANNOTATION

No authority vests in the reviewing courts the power to overturn a decision of the commission which it has the authority to

make. Rumney v. Pub. Utils. Comm'n, 172 Colo. 314, 472 P.2d 149 (1970) (decided prior to 2011 reorganization of motor carrier statutes).

40-10.1-116. Commission to notify local authorities - procedure. (1) Whenever the commission is of the opinion that a motor carrier is failing or omitting to do anything required of it by law or by any order, decision, rule, direction, or requirement of the commission or is acting or is about to act or permitting an act or about to permit an act in violation of the law or of any order, decision, rule, direction, or requirement of the commission, the commission shall request the attorney general of the state or the district attorney of any district to commence an action or proceeding in the district court in and for the county or city and county in which the cause or some part thereof arose or in which the motor carrier complained of maintains a principal place of business or resides. Such action or proceeding must be conducted in accordance with section 40-7-104; except that references in section 40-7-104 to the attorney general include any district attorney bringing the action or proceeding.

(2) Appellate review may be obtained in the supreme court concerning a final judgment in an action or proceeding under this section in the same manner and with the same effect, subject to this article, as appellate review of judgments of the district court in other actions for mandamus or injunction.

(3) A person injured by the noncompliance of a motor carrier with this article or any other provision of law or an order, decision, rule, direction, or requirement of the commission may apply to a court of competent jurisdiction for the enforcement thereof, and the court has jurisdiction to enforce obedience thereto by injunction or other proper process, mandatory or otherwise, and to restrain the motor carrier and its officers, agents, employees, or representatives from further disobedience thereof, or to enjoin upon them obedience to the same, and any person so injured has cause of action in damages and is privileged to pursue the usual and proper remedies as in any other case.

Source: L. 2011: Entire article added, (HB 11-1198), ch. 127, p. 405, § 1, effective August 10.

ANNOTATION

Annotator's note. Since § 40-10.1-116 is similar to §§ 40-10-115 and 40-11-113 as they existed prior to the 2011 reorganization of the motor carrier statutes, relevant cases construing those sections have been included in the annotations to this section.

The public utilities commission (PUC) has been granted legislative authority to invoke the aid of the attorney general and to resort to the courts to see to it that laws, rules, regulations, orders, and decisions dealing with public utilities are obeyed, enforced, and made effective. The PUC can do this on its own volition and no doubt could and would do so at the request of an aggrieved party. *Don Ward, Inc. v. Miller*, 154 Colo. 370, 390 P.2d 812 (1964).

Investigation and enforcement. The general assembly did not by these sections contemplate that every alleged violation of the terms of a certificate of public convenience and necessity had to be heard in a court of record. The commission has inherent power to investigate alleged violations and to make its orders, subject to review as provided by law. Enforcement of its orders may become a matter for judicial determination in which event this section applies. *Eveready Freight Serv., Inc. v. Pub. Utils. Comm'n*, 131 Colo. 172, 280 P.2d 442 (1955); *Don Ward, Inc. v. Miller*, 154 Colo. 370, 390 P.2d 812 (1964).

The PUC is clothed with general powers to regulate and control carriers for hire within the state. *Hanseman v. Hamilton*, 176 F. Supp. 371 (D. Colo. 1959).

Section has no extraterritorial effect. It is generally presumed that a statute was not intended to have extraterritorial effect unless there is definite expression of such intent; there is no such definitive expression in this section. *Hanseman v. Hamilton*, 176 F. Supp. 371 (D. Colo. 1959).

Section prescribes procedure. When the commission seeks enforcement of its final orders, decisions, and rules relating to motor vehicle carriers, this section prescribes the procedure to be adopted and followed in the enforcement of said orders, decisions, and rules.

Eveready Freight Serv., Inc. v. Pub. Utils. Comm'n, 131 Colo. 172, 280 P.2d 442 (1955).

Commission does not have exclusive jurisdiction over enforcement of orders. Although the supreme court recognized and gave full force and effect to the statute vesting PUC with authority to see to it that the law is complied with and to that end to invoke the aid of the attorney general and the courts, such holding cannot be construed to mean that the commission has exclusive jurisdiction over enforcement of its orders. *Don Ward, Inc. v. Miller*, 154 Colo. 370, 390 P.2d 812 (1964).

This section grants to an aggrieved party in plain and unequivocal language the right to institute and maintain an action to restrain a private carrier from violating its certificate to the damage of plaintiff—common carrier; and vest the court, if such be necessary, with jurisdiction to hear and dispose of the matter. *Don Ward, Inc. v. Miller*, 154 Colo. 370, 390 P.2d 812 (1964).

Administrative remedies need not be exhausted. The language of this section imposes no conditions to be met prior to invoking the aid of the district court, and the trial court in holding that the court was without jurisdiction until and unless the plaintiff had exhausted its administrative remedies, was in error. *Don Ward, Inc. v. Miller*, 154 Colo. 370, 390 P.2d 812 (1964).

The trial court has power to enjoin the defendant from operating in violation of the terms of his permit and to punish him for contempt for violation of its order. *Resler v. North E. Motor Freight, Inc.*, 154 Colo. 52, 388 P.2d 255 (1964); *Don Ward, Inc. v. Miller*, 154 Colo. 370, 390 P.2d 812 (1964).

Where a certificated carrier filed an action in the district court seeking to enjoin another certificated carrier from transporting freight beyond the scope of the authority granted and to the injury of the plaintiff, the supreme court held that the trial court has power to enjoin the defendant from operating in violation of the terms of his permit and to punish him for contempt for violation of its order. *Don Ward, Inc. v. Miller*, 154 Colo. 370, 390 P.2d 812 (1964).

Applied in *McDill v. North E. Motor Freight, Inc.*, 92 Colo. 198, 19 P.2d 204 (1933).

PART 2

MOTOR CARRIERS OF PASSENGERS -
COMMON CARRIERS AND CONTRACT CARRIERS

40-10.1-201. Certificate required. (1) A person shall not operate or offer to operate as a common carrier in intrastate commerce without first having obtained from the commission a certificate declaring that the present or future public convenience and necessity requires or will require such operation.

(2) The fact that a person carries on operations, in whole or in part, between substan-

tially fixed points or over established routes, or under contracts with more than one person, or by making repeated or periodic trips is prima facie evidence that the person is a common carrier and subject to this part 2 and part 1 of this article.

Source: L. 2011: Entire article added, (HB 11-1198), ch. 127, p. 405, § 1, effective August 10.

ANNOTATION

Annotator's note. Cases material to this section decided prior to its earliest source, L. 27, p. 499, § 1, have been included in the annotations to this section. Since § 40-10.1-201 is similar to §§ 40-10-101 and 40-10-104 as they existed prior to the 2011 reorganization of the motor carrier statutes, relevant cases construing those sections have been included in the annotations to this section.

Legislative intent in establishing several types of motor vehicle transportation. The general assembly established several types of motor vehicle transportation, including common and contract carriage. By doing so, without question it intended to protect the public health, safety, and general welfare by providing a framework for the better transportation of persons and property. *Denver Cleanup Serv. Inc. v. Pub. Utils. Comm'n*, 192 Colo. 537, 561 P.2d 1252 (1977).

This section applies to common carriers, that is one whose business occupation or regular calling is to carry chattels for all persons who may choose to employ and remunerate him. *Bushnell v. People*, 92 Colo. 174, 19 P.2d 197 (1933).

Contract carriers remain outside scope of regulation. This article was enacted for the regulation of motor vehicle carriers, but the act does not encompass private carriers. Private carriers remain outside the scope of regulation. *Burbridge v. Pub. Utils. Comm'n*, 91 Colo. 134, 12 P.2d 1115 (1932); *Pub. Utils. Comm'n v. Stanton Transp. Co.*, 153 Colo. 372, 386 P.2d 590 (1963).

No clear definition of contract carriage. One may look in vain in the statutes or in the rulings of the commission and of the supreme court for a clear definition of contract carriage or for an articulation of specific guidelines to be followed in the issuance of a contract carrier permit. *Denver Cleanup Serv., Inc. v. Pub. Utils. Comm'n*, 192 Colo. 537, 561 P.2d 1252 (1977).

The fundamental distinction between a common and contract carrier is that the contract carrier enters into a contract with each of his customers and assumes no obligation to carry for any other, while the common carrier undertakes to carry for all persons indifferently. *Ward Transp. Inc. v. Pub. Utils. Comm'n*, 151 Colo. 76, 376 P.2d 166 (1962).

The principal statutory distinction between the two is that a contract carrier is one which is

not a common carrier. *Denver Cleanup Serv., Inc. v. Pub. Utils. Comm'n*, 192 Colo. 537, 561 P.2d 1252 (1977).

One of the fundamental distinctions between a contract carrier and a common carrier is that a contract carrier has an obligation only to his contract-customers and has no obligation to others desiring carriage. In contrast, the common carrier must convey for all desiring its transportation. *Denver Cleanup Serv., Inc. v. Pub. Utils. Comm'n*, 192 Colo. 537, 561 P.2d 1252 (1977).

A motor vehicle carrier cannot at the same time be both a contract carrier and a common carrier by utilizing one part of a truck for common-carrier service and another part of the same truck for contract-carrier service. Such a holding would make regulatory power ridiculous. *McKay v. Pub. Utils. Comm'n*, 104 Colo. 402, 91 P.2d 965 (1939).

Situation in which carrier is neither common nor private or contract. A milk company which transports all the milk it produces to its processing plant, f.o.b. at the producers' stations is neither a common carrier nor a private or contract carrier for hire, because it then hauls only its own property. *Colo. Milk Transp., Inc. v. Safeway Stores, Inc.*, 269 F.2d 755 (10th Cir. 1959).

Indiscriminately accepting freight is undoubtedly one of the important tests in ascertaining whether or not a certain operation has the elements of a common carrier. *Greeley Transp. Co. v. People*, 79 Colo. 307, 245 P. 720 (1926); *Burbridge v. Pub. Utils. Comm'n*, 91 Colo. 134, 12 P.2d 1115 (1932); *Bushnell v. People*, 92 Colo. 174, 19 P.2d 197 (1933); *McDill v. North E. Motor Freight, Inc.*, 92 Colo. 198, 19 P.2d 204 (1933); *McKay v. Pub. Utils. Comm'n*, 104 Colo. 402, 91 P.2d 965 (1939); *Ward Transp., Inc. v. Pub. Utils. Comm'n*, 151 Colo. 76, 376 P.2d 166 (1962).

Carrier who does not accept freight for hire indiscriminately is not a common carrier. A motor vehicle operator engaged in the transportation of freight for hire under contracts with various individuals is not a common carrier because he does not hold himself out as willing to, and does not in fact, accept freight for transportation for hire indiscriminately for all who might or did seek such service. *Ward Transp., Inc. v. Pub. Utils. Comm'n*, 151 Colo. 76, 376 P.2d 166 (1962).

Test used in determining whether applicant is contract carrier held invalid. *Denver Cleanup Serv., Inc. v. Pub. Utils. Comm'n*, 192 Colo. 537, 561 P.2d 1252 (1977).

The constitution and the statutes of this state have given to the business of trash hauling the status of a matter of statewide concern, subject to the jurisdiction of the public utilities commission (PUC). Under such circumstances, a city has no power to pass an ordinance which is in conflict with the exercise by the commission of its statutory power. *Givigliano v. Veltri*, 180 Colo. 10, 501 P.2d 1044 (1972).

"Property" embraces matter removed to dumps. The word "property" as applied to the act is intended to and does embrace the transportation for hire of matter and things which the parties remove from various households and establishments and haul to nearby dumps. *Schlagel v. Hoelsken*, 162 Colo. 142, 425 P.2d 39, cert. denied, 389 U.S. 827, 88 S. Ct. 81, 19 L. Ed.2d 83 (1967).

Right of property exists in refuse material until it is destroyed. Although the owner of refuse materials may regard them as of no value, still the right to their possession and the need for their disposal are within the control of the individual owner. All of these materials have certain valuable uses under varied circumstances, and even though the owner desires to dispose of or destroy such materials, the right of property continues until disposed of or destroyed. In performing such disposal service, appellant was clearly engaged in the business of a common carrier. *Schlagel v. Hoelsken*, 162 Colo. 142, 425 P.2d 39, cert. denied, 389 U.S. 827, 88 S. Ct. 81, 19 L. Ed. 2d 83 (1967).

Vehicles engaged in transporting trash are within meaning of section. The amendment of § 40-10-101 expressly to include in the definition of "motor vehicle carrier", as follows: "any motor vehicle used in serving the public in the business of transportation of ashes, trash, waste, rubbish, and garbage", did not change the law; it merely clarified it. *Schlagel v. Hoelsken*, 162 Colo. 142, 425 P.2d 39, cert. denied, 389 U.S. 827, 88 S. Ct. 81, 19 L. Ed. 2d 83 (1967).

Those who merely secure passengers desiring to make trips as paying guests for private parties planning motor vehicle trips are not functioning as a public utility warranting regulation by the commission. *Yellow Cab Coop. Ass'n v. Colo. Ground Transp. Center, Inc.*, 654 P.2d 1331 (Colo. App. 1982).

Every application by a carrier for a certificate of public convenience and necessity

must be determined by the commission on its own individual merits, and consideration must be given to all competent evidence bearing upon the question of whether public convenience and necessity will be served by the granting of such application. Any applicant for a certificate, whether private carrier or otherwise, has the right to establish public convenience and necessity by any relevant evidence. *Ephraim Freightways, Inc. v. Pub. Utils. Comm'n*, 141 Colo. 330, 347 P.2d 960 (1959); *McKenna v. Nigro*, 150 Colo. 335, 372 P.2d 744 (1962).

Before two or more separate authorities may be integrated into one authority, there must be a showing that public convenience and necessity demand the new integrated service. *McKenna v. Nigro*, 150 Colo. 335, 372 P.2d 744 (1962); *Red Ball Motor Freight, Inc. v. Pub. Utils. Comm'n*, 154 Colo. 329, 390 P.2d 480 (1964).

The failure of the commission to take action against one who exceeds the authority granted does not ripen into a grant of authority to carry on an illegal operation. *McKenna v. Nigro*, 150 Colo. 335, 372 P.2d 744 (1962); *G & G Trucking v. Pub. Utils. Comm'n of Colo.*, 745 P.2d 211 (Colo. 1987).

The unlawful usurpation of authority and demonstration of the success of such unlawful operation can form no basis for the grant of authority to continue such operation. *McKenna v. Nigro*, 150 Colo. 335, 372 P.2d 744 (1962); *G & G Trucking v. Pub. Utils. Comm'n of Colo.*, 745 P.2d 211 (Colo. 1987).

Jurisdiction is expressly conferred on the commission by this section. *Eveready Freight Serv., Inc. v. Pub. Utils. Comm'n*, 131 Colo. 172, 280 P.2d 442 (1955).

Under this section a common carrier must have a certificate of convenience and necessity and a private or contract carrier must have an authorizing certificate before engaging in such business, and one failing to comply with the law is responsible for damages caused to others. *Colo. Milk Transp., Inc. v. Safeway Stores, Inc.*, 269 F.2d 755 (10th Cir. 1959); *McKenna v. Nigro*, 150 Colo. 335, 372 P.2d 744 (1962).

The PUC is the regulatory body, and as such is the one to determine whether it will or will not grant temporary certificates. *B.D.C. Corp. v. Pub. Utils. Comm'n*, 167 Colo. 472, 448 P.2d 615 (1968).

Applied in Northwest Transp. Serv., Inc. v. Pub. Utils. Comm'n, 197 Colo. 437, 593 P.2d 1366 (1979); *Morey v. Pub. Utils. Comm'n*, 629 P.2d 1061 (Colo. 1981).

40-10.1-202. Permit required - legislative declaration. (1) (a) A person shall not operate or offer to operate as a contract carrier in intrastate commerce without first obtaining a permit for such operation from the commission. As used in this part 2, "permit" does not include a permit under part 3, 4, or 5 of this article.

(b) The general assembly hereby declares that the business of contract carriers is affected with a public interest and that the safety and welfare of the public traveling upon the highways, the preservation and maintenance of the highways, and the proper regulation of common carriers using the highways require the regulation of contract carriers to the extent provided in this article, for which purposes the commission is vested with the authority to issue a permit to a contract carrier and may attach to such permit and to the exercise of the rights and privileges granted by the permit such terms and conditions as are reasonable.

(2) No permit, nor any extension or enlargement of an existing permit, shall be granted by the commission if, in the commission's judgment, the proposed operation of any such contract carrier will impair the efficient public service of any authorized common carrier then adequately serving the same territory over the same general highway route. The commission shall give written notice of any application for a permit to all persons interested in or affected by the issuance of the permit or any extension or enlargement thereof, pursuant to section 40-6-108 (2).

(3) Nothing contained in this article compels a contract carrier to be or become a common carrier or subjects a contract carrier to the laws or liability applicable to a common carrier.

Source: L. 2011: Entire article added, (HB 11-1198), ch. 127, p. 406, § 1, effective August 10.

ANNOTATION

- I. General Consideration.
- II. Public Interest and Powers of Commission.
- III. Impairment of Common Carrier Service and Notice.

I. GENERAL CONSIDERATION.

Annotator's note. Since § 40-10.1-202 is similar to § 40-11-103 as it existed prior to the 2011 reorganization of the motor carrier statutes, relevant cases construing that section have been included in the annotations to this section.

The legislative intent to coordinate motor vehicle transportation is clearly manifest from the language used in this section. McKay v. Pub. Utils. Comm'n, 104 Colo. 402, 91 P.2d 965 (1939); Pub. Utils. Comm'n v. Stanton Transp. Co., 153 Colo. 372, 386 P.2d 590 (1963).

This article was passed so that there would be no serious conflict between contract carriers and common carriers. Pub. Utils. Comm'n v. Stanton Transp. Co., 153 Colo. 372, 386 P.2d 590 (1963).

This article does not deny a contract carrier the right to operate as such and does not force him to operate, if at all, as a common carrier, thus denying him due process of law. Bushnell v. People, 92 Colo. 174, 19 P.2d 197 (1933).

Article 10 of this title does not apply to contract carriers. Pollard Contracting Co. v. Pub. Utils. Comm'n, 644 P.2d 7 (Colo. 1982).

The same carrier may hold both a common and contract carrier permit so long as there is

no overlapping of territory between the two. Red Ball Motor Freight, Inc. v. Pub. Utils. Comm'n, 185 Colo. 438, 525 P.2d 439 (1974).

Contract carriers are public utilities by legislative mandate. Pub. Utils. Comm'n v. Stanton Transp. Co., 153 Colo. 372, 386 P.2d 590 (1963).

II. PUBLIC INTEREST AND POWERS OF COMMISSION.

The general assembly has expressly declared that the business of contract carriers by motor vehicle is affected with a public interest. Pub. Utils. Comm'n v. Stanton Transp. Co., 153 Colo. 372, 386 P.2d 590 (1963).

The commission is clothed with general powers to regulate and control carriers for hire within the state, and courts will not interfere with its administrative rulings when they are just and reasonable; also that procedure before it should not be tested by the technical rules of pleading. Pub. Utils. Comm'n v. Weicker Transp. Co., 102 Colo. 211, 78 P.2d 633 (1938).

A private or contract carrier must have an authorizing certificate before engaging in such business, and that one failing to comply with the law is subject to damages caused to others. Colo. Milk Transp., Inc. v. Safeway Stores, Inc., 269 F.2d 755 (10th Cir. 1959).

Commission authorized to deny application for transfer of permit. When this section and § 40-11-105 are read together, and in light of the general public policy of the law to protect common carriers, it is apparent that denial of an application for transfer of a permit is within the

public utilities commission's regulatory authority. *Mobile Pre-Mix Transit, Inc. v. Pub. Utils. Comm'n*, 618 P.2d 663 (Colo. 1980).

The public utilities commission may properly deny a transfer of a contract carrier's permit wherever there is a substantial opportunity for a transferee, because of its advantageous position in the industry, to discriminate or compete unfairly. *Mobile Pre-Mix Transit, Inc. v. Pub. Utils. Comm'n*, 618 P.2d 663 (Colo. 1980).

Finding of actual intent unnecessary for denial. It is not necessary that the public utilities commission find actual intent before it may deny a transfer of a contract carrier's permit. *Mobile Pre-Mix Transit, Inc. v. Pub. Utils. Comm'n*, 618 P.2d 663 (Colo. 1980).

Carrier should not be denied certificate merely for prior unlawful conduct unless that unlawful conduct reached the level of intentional or reckless violations of the public utilities commission's rules and regulations. *Mobile Pre-Mix Transit, Inc. v. Pub. Utils. Comm'n*, 618 P.2d 663 (Colo. 1980).

Rules by commission on liability under a permit were promulgated within the commission's authority where the rule merely provided that any person, firm, or corporation which operated vehicles under a contract carrier's contract permit were responsible for any violations of the public utilities law or any other rules and regulations of the commission. *Regular Rt. Com. Carrier Conf. v. P.U.C.*, 761 P.2d 737 (Colo. 1988).

Commission may impose restrictions on transferred permit. The public utilities commission, upon an application to transfer a contract carrier permit, may impose in the public interest reasonable restrictions not inconsistent with past operations upon how the permit shall be operated by the transferee. *Pub. Utils. Comm'n v. Stanton Transp. Co.*, 153 Colo. 372, 386 P.2d 590 (1963).

It is the public interest, not the relative interests of the transferor and transferee, that is of paramount importance in matters concerning the transfer of a private carrier's permit and the public interest is not served if the effect of a transfer is to work economic devastation on common carriers. *Pub. Utils. Comm'n v. Stanton Transp. Co.*, 153 Colo. 372, 386 P.2d 590 (1963).

Permit does not free contract carrier from competition. The granting of a private motor carrier permit gives the permit holder the right to serve in an authorized area, but not free from other competition. *Pub. Utils. Comm'n v. DeLue*, 175 Colo. 317, 486 P.2d 1050 (1971).

Since a contract carrier has no obligation to serve the public, it is not entitled to protection from competition. Thus if the public convenience and necessity shows a need for the com-

mon carrier service, it is the public policy of the state that the common carrier is entitled to authority to serve that need. *DeLue v. Pub. Utils. Comm'n*, 169 Colo. 159, 454 P.2d 939, cert. denied, 396 U.S. 956, 90 S. Ct. 428, 24 L. Ed.2d 421 (1969).

Standard on review. Determination by the public utilities commission of whether a substantial opportunity for discrimination or unfair competition exists should not be disturbed unless it is unsupported by competent evidence or is arbitrary and capricious. *Mobile Pre-Mix Transit, Inc. v. Pub. Utils. Comm'n*, 618 P.2d 663 (Colo. 1980).

III. IMPAIRMENT OF COMMON CARRIER SERVICE AND NOTICE.

Impairment of service of authorized common carrier. No permit as a private carrier can be granted by the commission if in its opinion, based upon proper evidence, such private-carrier operation impairs the efficient public service of an authorized common carrier serving the same territory or over the same highways or routes. *McKay v. Pub. Utils. Comm'n*, 104 Colo. 402, 91 P.2d 965 (1939); *Archibald v. Pub. Utils. Comm'n*, 115 Colo. 190, 171 P.2d 421 (1946); *Donahue v. Pub. Utils. Comm'n*, 145 Colo. 499, 359 P.2d 1024 (1961); *Ward Transp., Inc. v. Pub. Utils. Comm'n*, 151 Colo. 76, 376 P.2d 166 (1962); *Pub. Utils. Comm'n v. Stanton Transp. Co.*, 153 Colo. 372, 386 P.2d 590 (1963); *DeLue v. Pub. Utils. Comm'n*, 169 Colo. 159, 454 P.2d 939, cert. denied, 396 U.S. 956, 90 S. Ct. 428, 24 L. Ed.2d 421 (1969).

The determination to be made in considering an application for a contract carrier permit is whether the existing common carrier service will be impaired if the application is granted. *Pollard Contracting Co. v. Pub. Utils. Comm'n*, 644 P.2d 7 (Colo. 1982).

"Person interested" does not include contract carriers. The clear intent of the section is that "persons interested in or affected by the issuance of such permit . . ." does not include other contract carriers. *Pub. Utils. Comm'n v. DeLue*, 175 Colo. 317, 486 P.2d 1050 (1971).

However, contract carriers might intervene in proceedings, at the discretion of the P.U.C. *Pub. Utils. Comm'n v. DeLue*, 175 Colo. 317, 486 P.2d 1050 (1971).

Intervenors are not thereby required to receive notice of the proceedings. *Pub. Utils. Comm'n v. DeLue*, 175 Colo. 317, 486 P.2d 1050 (1971).

Intervention is a matter of standing which is an entirely separate question from the matter of required notice. *Pub. Utils. Comm'n v. DeLue*, 175 Colo. 317, 486 P.2d 1050 (1971).

40-10.1-203. Rules for issuance of certificate - standing to protest - judicial review.

(1) The commission has the power to issue a certificate to a common carrier or to issue it for the partial exercise only of the privilege sought, and may attach to the exercise of the rights granted by the certificate such terms and conditions as, in the commission's judgment, the public convenience and necessity may require.

(2) (a) The granting of a certificate to operate a taxicab service within and between counties with a population of less than seventy thousand, based on the most recent available federal census figures, is governed by the doctrine of regulated monopoly.

(b) (I) Except as otherwise provided in subparagraph (II) of this paragraph (b), the granting of a certificate to operate a taxicab service within and between counties with a population of seventy thousand or greater, based on the most recent available federal census figures, is not an exclusive grant or monopoly, and the doctrine of regulated competition applies.

(II) In an application for a certificate to provide taxicab service within and between the counties of Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, El Paso, and Jefferson:

(A) The applicant has the initial burden of proving that it is operationally and financially fit to provide the proposed service. The applicant need not prove the inadequacy of existing taxicab service, if any, within the applicant's proposed geographic area of operation.

(B) If the applicant sustains the initial burden of proof as set forth in sub-subparagraph (A) of this subparagraph (II), there shall be a rebuttable presumption of public need for the service, and any party opposing the application shall prevail upon proving that the public convenience and necessity does not require granting the application or that the issuance of the certificate would be detrimental to the public interest.

(c) (I) (A) The holder of a certificate that contains authority to operate a taxicab service between points in the city and county of Denver also holds taxicab service authority from points in the city and county of Denver to all points in this state.

(B) Notwithstanding any provision of this section to the contrary, the holder of a certificate of public convenience and necessity that contains authority to operate as a taxicab between points within the state of Colorado shall also be deemed to hold taxicab authority to pick up passengers from any point in the state of Colorado and transport the passengers back to the certificate holder's authorized area when the certificate holder has dropped off passengers in close proximity to that point. The provisions of this sub-subparagraph (B) do not apply when a taxicab drops off a passenger at any airport in this state.

(II) The holder of a certificate that contains authority to operate a taxicab service to points in the city and county of Denver also holds taxicab service authority from points in the city and county of Denver to all points within the common carrier's base area, defined as that geographic area in which such common carrier may provide point-to-point taxicab service.

(III) The commission shall amend, by order and without notice or hearing, any existing taxicab service certificate as described in subparagraph (I) or (II) of this paragraph (c) to allow service from points in the city and county of Denver to either all points in this state or all points within the common carrier's base area to conform with the directives contained in said subparagraph (I) or (II).

(3) When an appeal of a commission decision under this section has been made by filing exceptions pursuant to section 40-6-109 and the commission has rendered a final decision on such exceptions as provided in article 6 of this title, any party thereto may, within thirty days after the final decision, apply directly to a district court in this state for judicial review pursuant to section 40-6-115. For purposes of judicial review, a decision of the commission on exceptions is final on the date the decision is served on the parties to the proceeding.

Editor's note: Subsection (2)(c)(I) was numbered as § 40-10-105 (2)(d)(I) in Senate Bill 11-180 (see L. 2011, p. 1085). That provision was harmonized with subsection (2)(c)(I) as it appears in House Bill 11-1198.

ANNOTATION

Law reviews. For note, "Division of Property in Separate Maintenance", see 30 Dicta 310 (1953). For article, "May Regulated Utilities Monopolize the Sun?", see 56 Den. L.J. 31 (1979).

Annotator's note. Since § 40-10.1-203 is similar to § 40-10-105 as it existed prior to the 2011 reorganization of the motor carrier statutes, relevant cases construing that section have been included in the annotations to this section.

Article XXV, Colo. Const., has granted to the commission authority to issue certificates of public convenience and necessity. Miller Bros. v. Pub. Utils. Comm'n, 185 Colo. 414, 525 P.2d 443 (1974).

The public utilities commission's primary function and activity is certification, registration, and permitting of public utilities. The PUC does not offer, directly or indirectly, telephone services, electric services, motor vehicle services, or any other public utility services or programs to the public. Its function is limited to regulation of private entities and public utilities that offer such services. Reeves v. Queen City Transp., 10 F. Supp.2d 1181 (D. Colo. 1998).

A public utility's activity does not become a "program or activity" of the PUC for purposes of the Americans with Disabilities Act merely because of the PUC's issuance of a certificate of public convenience and necessity. Reeves v. Queen City Transp., 10 F. Supp.2d 1181 (D. Colo. 1998).

Regulated competition to protect public from destructive or excessive competition. The obligation to safeguard the general public against the impaired services or higher rates accompanying destructive or excessive competition is at the heart of the policy of regulated competition. Morey v. Pub. Utils. Comm'n, 629 P.2d 1061 (Colo. 1981); Trans-Western Express, Ltd. v. Pub. Utils. Comm'n, 877 P.2d 350 (Colo. 1994).

The policy of regulated competition endorsed by subsection (2) reflects a legislative determination that some restraints on inter-carrier competition are necessary to protect the public interest. Morey v. Pub. Utils. Comm'n, 629 P.2d 1061 (Colo. 1981).

Jurisdiction is expressly conferred on the commission by this section. Eveready Freight Serv., Inc. v. Pub. Utils. Comm'n, 131 Colo. 172, 280 P.2d 442 (1955).

The commission under this section is acting in a legislative capacity. Miller Bros. v. Pub. Utils. Comm'n, 185 Colo. 414, 525 P.2d 443 (1974).

Effect of finding of unlawfulness under old doctrine. Under the regulated monopoly doctrine in effect prior to this section, it has intimated fairly strongly that when a contract carrier was violating the law and operating as a common carrier he could not use this as the basis for obtaining a common carrier certificate. Again, with some shadings, if there was a finding of unlawfulness of the contract carrier permit, the certificate of public convenience and necessity would be denied, irrespective of the character of the unlawfulness. Thacker Bros. Transp. v. Pub. Utils. Comm'n, 189 Colo. 301, 543 P.2d 719 (1975).

Present effect. For a certificate to be denied under the present section there must be a finding by the commission, not only of unlawfulness, but of violations of the law including the rules and regulations of the commission reaching the height of intentional violation, reckless disregard for the law, or persistent, protracted, intentional, and knowing violation. Thacker Bros. Transp. v. Pub. Utils. Comm'n, 189 Colo. 301, 543 P.2d 719 (1975).

The function of the public utilities commission is to resolve questions of fact. Pub. Utils. Comm'n v. Verl Harvey, Inc., 150 Colo. 158, 371 P.2d 452 (1962).

The public utilities commission has wide discretionary powers in determining the demands of public convenience and necessity. Pub. Utils. Comm'n v. Donahue, 138 Colo. 492, 335 P.2d 285 (1959).

This statute changed the doctrine of "regulated monopoly" into the doctrine of "regulated competition". Wells Fargo Armored Serv. Corp. v. Pub. Utils. Comm'n, 190 Colo. 204, 545 P.2d 707 (1976).

In this section the general assembly announced a policy of regulated competition in the granting or denying of certificates of public convenience and necessity to operate a motor vehicle for hire. Rocky Mt. Airways, Inc. v. Pub. Utils. Comm'n, 181 Colo. 170, 509 P.2d 804 (1973).

This section established the legislative doctrine of regulated competition. Thacker Bros. Transp. v. Pub. Utils. Comm'n, 189 Colo. 301, 543 P.2d 719 (1975).

Senate Bill 208, adopted by Colo. Sess. Laws 1967, ch. 433, at 974, and now in this section, changed the policy of this state from one of regulated monopoly to "regulated competition". Denver Cleanup Serv., Inc. v. Pub. Utils. Comm'n, 192 Colo. 537, 561 P.2d 1252 (1977).

The general assembly, in effect, stated in subsection (2) that henceforth the state's policy

should be one of regulated competition and no longer that of regulated monopoly. *Miller Bros. v. Pub. Utils. Comm'n*, 185 Colo. 414, 525 P.2d 443 (1974).

Regulated competition is not synonymous with deregulation. *Morey v. Pub. Utils. Comm'n*, 629 P.2d 1061 (Colo. 1981).

Authorization of new service granted only pursuant to this section. Authorization to engage in an entirely new service, a service which the applicant is forbidden to enter, can be granted only pursuant to this section. *Pub. Utils. Comm'n v. Donahue*, 138 Colo. 492, 335 P.2d 285 (1959).

The controlling factor under subsection (2) is the public interest. *Miller Bros. v. Pub. Utils. Comm'n*, 185 Colo. 414, 525 P.2d 443 (1974).

Subsection (2) is not void because the general assembly did not define the term "regulated competition". The term is perfectly plain and understandable. *Miller Bros. v. Pub. Utils. Comm'n*, 185 Colo. 414, 525 P.2d 443 (1974).

The commission has the power to prescribe reasonable rules and regulations in connection with a certificate of public convenience and necessity. *Airport Limousine Serv., Inc. v. Cabs, Inc.*, 167 Colo. 378, 447 P.2d 978 (1968).

The commission has been given authority to issue more than one certificate for the same route, or portion thereof, if it finds that the present or future public convenience and necessity requires or will require such operation. *Miller Bros. v. Pub. Utils. Comm'n*, 185 Colo. 414, 525 P.2d 443 (1974).

Certificate holder has no vested right to keep out competition. The fact that a common carrier is presently operating on a route does not give it a vested right to keep out all new competition merely because its service is adequate. *Morey v. Pub. Utils. Comm'n*, 196 Colo. 153, 582 P.2d 685 (1978).

A common carrier serving a particular area is entitled to protection against competition so long as the offered service is adequate to satisfy the needs of the area. *Pub. Utils. Comm'n v. Donahue*, 138 Colo. 492, 335 P.2d 285 (1959); *Denver & R. G. W. R. R. v. Pub. Utils. Comm'n*, 142 Colo. 400, 351 P.2d 278 (1960); *Ephraim Freightways, Inc. v. Pub. Utils. Comm'n*, 151 Colo. 596, 380 P.2d 228 (1963).

Finding of public convenience and necessity prerequisite to issuance of certificate. As a condition precedent to the issuance of a certificate, the commission shall find that the service to be authorized is or will be required by present or future public convenience and necessity. *Denver & R. G. W. R. R. v. Pub. Utils. Comm'n*, 142 Colo. 400, 351 P.2d 278 (1960).

"Public convenience and necessity" involves more than simply showing that another's business can be taken away from him by one means or another. And it is more than rendering "better" service. *Pub. Utils. Comm'n v. Verl*

Harvey, Inc., 150 Colo. 158, 371 P.2d 452 (1962).

Question involves whether convenience and necessity demand additional service. The question involved in the granting or denial of a certificate of public convenience and necessity for a common carrier in a particular area is not whether the extent of business in such area is sufficient to warrant an additional certified carrier, but whether the public convenience and necessity demand an additional service. *Denver & R. G. W. R. R. v. Pub. Utils. Comm'n*, 142 Colo. 400, 351 P.2d 278 (1960); *Ephraim Freightways, Inc. v. Pub. Utils. Comm'n*, 151 Colo. 596, 380 P.2d 228 (1963).

The existence of an adequate and satisfactory service by motor carriers already in the area is a negation of a public need and demand for added service by another carrier. *Denver & R. G. W. R. R. v. Pub. Utils. Comm'n*, 142 Colo. 400, 351 P.2d 278 (1960); *Ephraim Freightways, Inc. v. Pub. Utils. Comm'n*, 151 Colo. 596, 380 P.2d 228 (1963).

The adequacy, availability, and competitive character of existing service are proper factors to consider in concluding that the applicant's service is not required to serve public convenience and necessity. *Trans-Western Express, Ltd. v. Pub. Utils. Comm'n*, 877 P.2d 350 (Colo. 1994).

The test of inadequacy is not perfection. *Ephraim Freightways, Inc. v. Pub. Utils. Comm'n*, 151 Colo. 596, 380 P.2d 228 (1963).

Inadequacy of present service must be substantial. For a new service to be authorized in an area already served by a common carrier, inadequacy of the present service must be shown to be substantial. *Ephraim Freightways, Inc. v. Pub. Utils. Comm'n*, 151 Colo. 596, 380 P.2d 228 (1963).

There must be some showing by "proper evidence" of inadequacy of existing common carrier service before a new authority can be granted. *Denver & R. G. W. R. R. v. Pub. Utils. Comm'n*, 142 Colo. 400, 351 P.2d 278 (1960).

Adequacy of service is no longer controlling determinant. By the enactment of subsection (2), the general assembly intended to change and, in effect, did change the standard concerning inadequate service. Adequacy or inadequacy of service need no longer be the controlling determinant, although it is one of the elements that it has considered. *Miller Bros. v. Pub. Utils. Comm'n*, 185 Colo. 414, 525 P.2d 443 (1974); *Morey v. Pub. Utils. Comm'n*, 196 Colo. 153, 582 P.2d 685 (1978).

Under subsection (2), a finding of inadequate service is no longer a prerequisite to the granting of a certificate. *D & G San., Inc. v. Pub. Utils. Comm'n*, 185 Colo. 386, 525 P.2d 455 (1974); *Contact-Colorado Springs, Inc. v. Mobile Radio Tel. Serv., Inc.*, 191 Colo. 180, 551 P.2d 203 (1976).

Controlling consideration is public need, not adequacy of existing service. Under the policy of regulated competition, the controlling consideration is the public need. While adequacy of existing service is a factor to be considered, it is no longer the controlling determinant. *Morey v. Pub. Utils. Comm'n*, 629 P.2d 1061 (Colo. 1981); *Trans-Western Express, Ltd. v. Pub. Utils. Comm'n*, 877 P.2d 350 (Colo. 1994).

Public need means the needs of the public as a whole, not simply the needs of witnesses who testify in favor of an applicant's proposed services, and it may be so disserved by destructive competition as to justify denial of an application for common carrier authority. *Morey v. Pub. Utils. Comm'n*, 629 P.2d 1061 (Colo. 1981); *Trans-Western Express, Ltd. v. Pub. Utils. Comm'n*, 877 P.2d 350 (Colo. 1994).

Needs of applicant's customers not conclusive of public need. While the needs and preferences of an applicant's customers are probative of a public need for competitive services, they are not conclusive. *Morey v. Pub. Utils. Comm'n*, 629 P.2d 1061 (Colo. 1981); *Trans-Western Express, Ltd. v. Pub. Utils. Comm'n*, 877 P.2d 350 (Colo. 1994).

The same carrier may hold both a common and contract carrier permit so long as there is no overlapping of territory between the two. *Red Ball Motor Freight, Inc. v. Pub. Utils. Comm'n*, 185 Colo. 438, 525 P.2d 439 (1974).

Contract carrier not automatically entitled to be certified as common carrier. A contract carrier, whose operations more closely resemble that of a common carrier than that of a contract carrier, is not going to be automatically entitled to become certificated as a common carrier. *Miller Bros. v. Pub. Utils. Comm'n*, 185 Colo. 414, 525 P.2d 443 (1974).

Duplicative operation cannot be authorized where existing service is adequate. Where a carrier is already serving an area, a duplicative operation cannot be authorized where the existing service is adequate, because the granting of an additional certificate of public convenience and necessity requires a showing that the existing facilities and services are substantially inadequate. *Rocky Mt. Airways, Inc. v. Pub. Utils. Comm'n*, 181 Colo. 170, 509 P.2d 804 (1973).

Two or more carriers authorized to provide what appear to be substantially similar services in the same area must be viewed as providing different services to the extent their respective certificates of convenience contain different terms or conditions. Any change in the terms and conditions initially imposed on one carrier's authority that results in improvement of that carrier's competitive position in the same market necessarily effects a change in the competitive structure previously determined by the public utilities commission to be required by the

public convenience and necessity. Any such change, therefore, may be authorized only if the applicable statutory criteria are satisfied. *Yellow Cab Coop. Ass'n v. Pub. Utils. Comm'n*, 869 P.2d 545 (Colo. 1994).

Carrier cannot establish a public need for additional service by its unauthorized operations. *Miller Bros. v. Pub. Utils. Comm'n*, 185 Colo. 414, 525 P.2d 443 (1974); *G & G Trucking v. P.U.C. of Colo.*, 745 P.2d 211 (Colo. 1987).

Public utilities commission did not announce new evidentiary standard that forecloses the testimony of a single shipper to establish public need. The commission merely found a lack of support for the applicant's assertion that there was a public need to grant its application. *Trans-Western Express, Ltd. v. Pub. Utils. Comm'n*, 877 P.2d 350 (Colo. 1994).

As to lack of legislatively prescribed standards or criteria under which an additional competitive certificate may be granted or reviewed, see *Miller Bros. v. Pub. Utils. Comm'n*, 185 Colo. 414, 525 P.2d 443 (1974).

When an established route is described by fixed points, the established route is more than a described passageway between the fixed points. The established route is a grant by the commission of statutory authority to serve the public on that route. *Miller Bros. v. Pub. Utils. Comm'n*, 185 Colo. 414, 525 P.2d 443 (1974).

The granting of "intermediate service" to a fixed point on the established route is in no way a limitation or exclusion of authority to serve the public over the entire route. In fact, if anything, it is a grant of additional authority for that fixed point. *Miller Bros. v. Pub. Utils. Comm'n*, 185 Colo. 414, 525 P.2d 443 (1974).

The administrative law judge properly considered the impact the additional competition might have on competing carriers and on the existing carrier's ability to provide safe and efficient transportation services to its customers and the public. The impact or harm to common carriers is relevant, however, only if it affects the general public, of which the carrier is a part. *Trans-Western Express, Ltd. v. Pub. Utils. Comm'n*, 877 P.2d 350 (Colo. 1994).

Commission's abuse of discretion. A finding by the public utilities commission that public convenience and necessity justified granting authority to an applicant to expand illegal operations, being wholly unsupported by the record, amounted to an abuse of discretion. *Pub. Utils. Comm'n v. Verl Harvey, Inc.*, 150 Colo. 158, 371 P.2d 452 (1962).

On review the district court is limited to the determination of whether or not the public utilities commission regularly pursued its authority and whether the record supported the findings of fact and conclusions of law. *Rocky Mt. Airways, Inc. v. Pub. Utils. Comm'n*, 181 Colo. 170, 509 P.2d 804 (1973).

Court's authority on appeal. Under this section the commission needs to apply guidelines, and it is within the court's jurisdiction on appeal to see that it does. *Miller Bros. v. Pub. Utils. Comm'n*, 185 Colo. 414, 525 P.2d 443 (1974).

It is within the court's authority to declare standards and criteria as unconstitutional and arbitrary, capricious, unreasonable, or vague. *Miller Bros. v. Pub. Utils. Comm'n*, 185 Colo. 414, 525 P.2d 443 (1974); *Morey v. Pub. Utils. Comm'n*, 629 P.2d 1061 (Colo. 1981).

A court may not set aside orders based upon findings of fact upon which the evidence is conflicting and competent. *Ephraim*

Freightways, Inc. v. Pub. Utils. Comm'n, 151 Colo. 596, 380 P.2d 228 (1963).

Likewise, great weight must be given to the interpretation which the commission gives to its own language, and unless such interpretation is clearly erroneous, arbitrary, or in excess of its jurisdiction, the courts may not interfere. *McKenna v. Nigro*, 150 Colo. 335, 372 P.2d 744 (1962).

County which provides mass transit within county boundaries is exempt from regulation by PUC. *City of Durango v. Durango Transp.*, 807 P.2d 1152 (Colo. 1991).

40-10.1-204. Temporary authority. (1) To enable the provision of common carrier or contract carrier service for which there appears to be an immediate and urgent need to any point or within a territory having no such service capable of meeting the need, the commission may, in its discretion and without hearings or other proceedings, grant temporary authority for such service by a common carrier or a contract carrier, as the case may be. Such temporary authority, unless suspended or revoked for good cause, is valid for such time as the commission specifies, but for not more than an aggregate of one hundred eighty days, unless for good cause shown the commission extends the temporary authority for a period which may extend until a final administrative decision is rendered. A grant of temporary authority or an extension thereof creates no presumption that corresponding permanent authority will be granted thereafter.

(2) Pending the determination of an application filed with the commission for approval of an acquisition of stock of a common carrier or contract carrier, a consolidation or merger of two or more such carriers, or a purchase, lease, or contract to operate the properties of one or more such carriers, the commission may, in its discretion and without hearings or other proceedings, grant temporary approval for a period not exceeding one hundred eighty days for the operation of the carrier or its properties sought to be acquired by the person proposing in such pending application to acquire the properties or stock, if it appears that failure to grant such temporary approval may result in destruction of or injury to the carrier or its properties sought to be acquired, or may interfere substantially with their future usefulness in the performance of adequate and continuous service to the public. For good cause shown, the commission may extend such temporary approval for a period which may extend until a final administrative decision is rendered. Temporary approval or an extension thereof does not create a presumption that the application will be granted.

(3) Common carrier or contract carrier service rendered under temporary authority or approval is subject to all applicable provisions of this title and to the rules and requirements of the commission. The maximum time period of any temporary authority or approval is not subject to extension or renewal.

(4) The commission shall not issue a temporary authority or approval unless, under such general rules as the commission may prescribe governing the application and notice thereof to interested or affected common carriers, all interested or affected carriers have been given at least five days' notice of the filing of the application and an opportunity to protest the granting thereof. If the commission determines that an emergency exists, it may issue temporary authority or approval at once by making specific reference in its order to the circumstances constituting the emergency, in which case no notice need be given, but any such emergency authority or approval expires no later than thirty days after it was issued.

Source: L. 2011: Entire article added, (HB 11-1198), ch. 127, p. 407, § 1, effective August 10.

ANNOTATION

Annotator's note. Since § 40-10.1-204 is similar to § 40-6-120 as it existed prior to the 2011 reorganization of the motor carrier statutes, relevant cases construing that section have been included in the annotations to this section.

Codification of existing practice. Rather than creating a new power in the public utilities commission to issue temporary authority, this section merely codified and set guidelines with respect to an existing practice which has been in effect for many years. *Aspen Airways, Inc. v. Rocky Mt. Airways, Inc.*, 196 Colo. 285, 584 P.2d 629 (1978).

The timely filing of a request for extension of temporary authority gives the public utilities commission jurisdiction to act on the request after the original time period for temporary authority has expired so long as the public utilities commission acts within a reasonable

time frame. *Gambler's Express v. Pub. Utils. Comm'n*, 868 P.2d 405 (Colo. 1994).

In ruling upon a motion for extension of a temporary authority, it was not necessary to make new findings demonstrating "an immediate and urgent need for service" and demonstrating that "no other carrier service is capable of meeting that need" since section merely requires a showing of good cause for extending temporary authority. *Gambler's Express v. Pub. Utils. Comm'n*, 868 P.2d 405 (Colo. 1994).

Statute does not mandate that a motion to extend temporary authority be filed within twenty days prior to the expiration of temporary authority. *Gambler's Express v. Pub. Utils. Comm'n*, 868 P.2d 405 (Colo. 1994).

Applied in *Wilson v. United States Fid. & Guar. Co.*, 633 P.2d 493 (Colo. App. 1981).

40-10.1-205. Transfer of certificate or permit. (1) A certificate or permit, or rights obtained under a certificate or permit, that are held, owned, or obtained by any common carrier or contract carrier may be sold, assigned, leased, encumbered, or transferred as other property, subject to prior authorization by the commission.

(2) Absent other facts, the fact that a common carrier or contract carrier conducts operations with independent contractors does not in and of itself constitute a lease or transfer of the certificate.

(3) An existing certificate or permit shall not be transferred unless the fitness of the transferee is established to the satisfaction of the commission.

Source: L. 2011: Entire article added, (HB 11-1198), ch. 127, p. 408, § 1, effective August 10.

ANNOTATION

Annotator's note. Since § 40-10.1-205 is similar to §§ 40-10-106 and 40-11-104 as they existed prior to the 2011 reorganization of the motor carrier statutes, relevant cases construing those sections have been included in the annotations to this section.

A certificate is by law deemed subject to transfer as any other property, although the approval of the commission is additionally required, and the fitness of the purchaser to succeed to the common-carrier operation of the transferor. *DeLue v. Pub. Utils. Comm'n*, 169 Colo. 159, 454 P.2d 939, cert. denied, 396 U.S. 956, 90 S. Ct. 428, 24 L. Ed. 2d 421 (1969).

In order for the public utilities commission (PUC) to revoke, amend, or alter permits or certificates of participating parties in a transfer, it must comply with the statutory procedural requirements which would legally justify the end sought to be accomplished, issue a notice, hold a hearing at which the respondent is given an opportunity to defend itself, and finally, enter its decision in accordance with the evidence. Anything less will not satisfy the statute nor that

quality of fairness required by "procedural due process". *Buckingham v. Pub. Utils. Comm'n*, 180 Colo. 267, 504 P.2d 677 (1972).

Transferee's authority limited to that of transferor. The PUC correctly refused to fragmentize the general commodity certificate transferred and limit the transferee's authority to the service which had been primarily provided by the transferor where the evidence demonstrated the transferor had carried on the business of hauling a broad range of commodities and that it has accepted all freight tendered to it within the scope of its operating authority. *DeLue v. Pub. Utils. Comm'n*, 169 Colo. 159, 454 P.2d 939, cert. denied, 396 U.S. 956, 90 S. Ct. 428, 24 L. Ed. 2d 421 (1969).

Contract carrier has no legal interest to assert in a proceeding involving certificate transfer. Since the contract carrier has no right to protection from competition by a common carrier or its successors in interest in has no legal interest or right which it can assert in a proceeding involving the transfer of a common-carrier certificate. *DeLue v. Pub. Utils. Comm'n*,

169 Colo. 159, 454 P.2d 939, cert. denied, 396 U.S. 956, 90 S. Ct. 428, 24 L. Ed. 2d 421 (1969).

No transfer. Where the owner does not surrender his duties as president and director of the corporation, he and his wife continue to be majority stockholders, and the duties of the

manager were similar to other carriers; it is quite apparent that there was not a transfer of control. *Overland Motor Express, Inc. v. Kingery Transp. Co.*, 167 Colo. 105, 445 P.2d 713 (1968).

40-10.1-206. Rates - limitations. (1) It is unlawful for any common carrier to carry or advertise that it will carry any individuals at rates different from those it has on file with the commission for such carriage.

(2) A contract carrier shall not destroy or impair, through discrimination or unfair competition, the service or business of any common carrier or the integrity of the state's regulation of any such service or business; and to that end, the commission is authorized and directed to prescribe minimum rates, fares, and charges to be collected by contract carriers when competing with duly authorized common carriers, which rates, fares, and charges must not be less than the rates prescribed for common carriers for substantially the same or similar service.

(3) In accordance with this article and such rules as the commission may prescribe, every contract carrier subject to this article shall file with the commission, within such time and in such form as the commission may designate, and shall keep on file with the commission, at all times, schedules showing rates, charges, and collections, collected or enforced or to be collected or enforced, that in any manner affect or relate to the operations of any such contract carrier; and the commission has full power to change, amend, or alter any such tariff or, after hearing, fix the rates of any contract carrier subject to this article that competes with a common carrier.

Source: L. 2011: Entire article added, (HB 11-1198), ch. 127, p. 409, § 1, effective August 10.

ANNOTATION

- I. General Consideration.
- II. Prescription of Rules and Regulations.
- III. Prescription of Rates.

I. GENERAL CONSIDERATION.

Annotator's note. Since § 40-10.1-206 is similar to § 40-11-105 as it existed prior to the 2011 reorganization of the motor carrier statutes, relevant cases construing that section have been included in the annotations to this section.

Legislative intent is clear, that the authorization of contract carriers shall not be detrimental, within the limits of the law, to common-carrier operation, and that motor transportation be coordinated in such a way as to preserve common-carrier operation and not to impair the integrity of state regulation of common-carrier service. *McKay v. Pub. Utils. Comm'n*, 104 Colo. 402, 91 P.2d 965 (1939).

Applied in *Pollard Contracting Co. v. Pub. Utils. Comm'n*, 644 P.2d 7 (Colo. 1982).

II. PRESCRIPTION OF RULES AND REGULATIONS.

The public utilities commission has broad constitutional and statutory authority. However, the breadth of that authority is to be tested

by the statutes themselves and not by the unbridled whim of the commission. The commission is a creature of statute. Both the power and scope of its authority and its procedures are necessarily controlled by the act upon which it relies. *Pub. Utils. Comm'n v. Colo. Motorway, Inc.*, 165 Colo. 1, 437 P.2d 44 (1968).

Commission must comply with "procedural due process". The public utilities commission, in a general investigation held for the purpose of promulgating rules and regulations, cannot, regardless of the type of evidence that may be presented to it, revoke, amend, or alter permits or certificates of participating parties. It must comply with the statutory procedural requirements which would legally justify the end sought to be accomplished, issue a notice, hold a hearing at which the respondent is given an opportunity to defend itself, and finally, enter its decision in accordance with the evidence. Anything less will not satisfy the statute nor that quality of fairness required by "procedural due process". *Pub. Utils. Comm'n v. Colo. Motorway, Inc.*, 165 Colo. 1, 437 P.2d 44 (1968).

Commission authorized to deny application for transfer of permit. When § 40-11-103 and this section are read together, and in light of the general public policy of the law to protect common carriers, it is apparent that denial of an

application for transfer of a permit is within the public utilities commission's regulatory authority. *Mobile Pre-Mix Transit, Inc. v. Pub. Utils. Comm'n*, 618 P.2d 663 (Colo. 1980).

The public utilities commission may properly deny a transfer of a contract carrier's permit wherever there is a substantial opportunity for a transferee, because of its advantageous position in the industry, to discriminate or compete unfairly. *Mobile Pre-Mix Transit, Inc. v. Pub. Utils. Comm'n*, 618 P.2d 663 (Colo. 1980).

Finding of actual intent unnecessary for denial. It is not necessary that the public utilities commission find actual intent before it may deny a transfer of a contract carrier's permit. *Mobile Pre-Mix Transit, Inc. v. Pub. Utils. Comm'n*, 618 P.2d 663 (Colo. 1980).

Carrier should not be denied certificate merely for prior unlawful conduct unless that unlawful conduct reached the level of intentional or reckless violations of the public utilities commission's rules and regulations. *Mobile Pre-Mix Transit, Inc. v. Pub. Utils. Comm'n*, 618 P.2d 663 (Colo. 1980).

Once having granted one or even several waivers of its rules, the public utilities commission was not bound to continue to grant waivers, the approval of which is more a matter of grace than of right. *B & M Serv., Inc. v. Pub. Utils. Comm'n*, 163 Colo. 228, 429 P.2d 293 (1967).

The emergency letters permitted by public utilities commission rules governing contract motor vehicle carriers are improperly used when they enable another company to set up a transportation service for which it had no authority. *Rumney v. Pub. Utils. Comm'n*, 172 Colo. 314, 472 P.2d 149 (1970).

When determining whether a contract carrier is offering distinctly different or superior service to that offered by an authorized common carrier, the commission may consider a contract carrier's ancillary, nontransportation services. *Ace West Trucking v. Pub. Utils. Comm'n*, 788 P.2d 755 (Colo. 1990).

Standard on review. Determination by the public utilities commission of whether a substantial opportunity for discrimination or unfair competition exists should not be disturbed unless it is unsupported by competent evidence or is arbitrary and capricious. *Mobile Pre-Mix Transit, Inc. v. Pub. Utils. Comm'n*, 618 P.2d 663 (Colo. 1980).

III. PRESCRIPTION OF RATES.

Commission's duty to adopt rates. It is of particular significance that the general assembly in this section not only granted power and authority but also made it the commission's duty to adopt rates. *Consolidated Freightways Corps. v. Pub. Utils. Comm'n*, 158 Colo. 239, 406 P.2d 83 (1965).

Section not applicable unless contract carrier competing with common carrier in rendering substantially same service. If a contract carrier is not competing with a common carrier and if the former is not rendering a service substantially the same or similar to that of the common carrier, then the terms and provisions of subsection (2) do not come into play and the tariff filed with the public utilities commission is lawful, even though calling for rates less than those of the common carrier. *Denver-Climax Truck Line v. Jim Chelf, Inc.*, 167 Colo. 69, 445 P.2d 399 (1968).

Rules by commission which establish the manner in which the minimum rate for a contract carrier competing with a common carrier is to be determined, which require a contract carrier competing with any scheduled common carrier to file a tariff of rates and charges not less than the lowest rate prescribed for any competing common carrier providing substantially the same or similar service, and which authorize the commission to change any tariff or rate of any contract carrier competing with a motor vehicle common carrier providing substantially the same or similar service, are consistent with the doctrine of regulated competition and are in accord with the commission's statutory authority to prescribe minimum rates for contract carriers not less than the rates prescribed for common carriers providing substantially the same or similar service. *Regular Rt. Com. Carrier Conf. v. Pub. Utils. Comm'n*, 761 P.2d 737 (1988).

Rates to protect public and prevent destructive rate-making. The commission has been charged with the duty to carry out its mission in two areas, to wit: To protect the public and to prevent destructive rate-making which could result in nonavailability of the service to the public. *Consolidated Freightways Corps. v. Pub. Utils. Comm'n*, 158 Colo. 239, 406 P.2d 83 (1965).

Duty to prescribe rates for contract carriers tied to same duty for common carriers. Reading this section it would be impossible for the commission to carry out a duty to prescribe minimum rates for contract carriers if it established no rates for common carriers. The one duty is tied in with the other, and the prescribed rates for one class are the basis for the minimum rates for the other. *Consolidated Freightways Corps. v. Pub. Utils. Comm'n*, 158 Colo. 239, 406 P.2d 83 (1965).

Fairness of rate left to commission. The general assembly itself has declared the necessity and the duty and left to the commission the determination of a rate that is fair to the public and sufficiently compensatory to the utility to ensure a fair return on its investment. Regulation—not nonregulation—has been declared to be in the public interest. *Consolidated Freightways Corps. v. Pub. Utils. Comm'n*, 158 Colo. 239, 406 P.2d 83 (1965).

Mandamus is proper only where there is a legal duty to perform the act requested. Where the P.U.C. has no clear legal duty to reject or annul the rates published, then until the P.U.C. has determined that contract and common carriers are competing and that the services are substantially similar to those rendered by a

competing common carrier, it has no duty to reject those rates, and no right to relief in the nature of mandamus in the trial court will lie. *Denver-Laramie-Walden Truck Line v. Denver-Fort Collins Freight Serv., Inc.*, 156 Colo. 366, 399 P.2d 242 (1965).

40-10.1-207. Taxicab license plates - rules. (1) (a) The commission shall either:

(I) Create a document that a person authorized to provide taxicab services under this article may use to verify to the department of revenue or the department's authorized agent that the person is so authorized; or

(II) Create a system to electronically verify to the department of revenue or the department's authorized agent that the person is authorized to provide taxicab services under this part 2.

(b) Upon request, the commission shall provide the document to the person with such authority or the electronic verification to the department of revenue or the department's authorized agent.

(2) The commission may promulgate rules to implement this section and to enforce section 42-3-236, C.R.S.

(3) Repealed.

Source: L. 2011: Entire section added, (HB 11-1234), ch. 142, p. 496, § 4, effective July 1.

Editor's note: (1) Amendments to this article by House Bill 11-1198 and House Bill 11-1234 were harmonized.

(2) Subsection (3)(b) provided for the repeal of subsection (3), effective July 1, 2012. (See L. 2011, p. 496.)

PART 3

MOTOR CARRIERS OF PASSENGERS - LIMITED REGULATION

40-10.1-301. Definitions. As used in this part 3, unless the context otherwise requires:

(1) "Charter basis" means on the basis of a contract for transportation whereby a person agrees to provide exclusive use of a motor vehicle to a single chartering party for a specific period of time during which the chartering party has the exclusive right to direct the operation of the vehicle, including selection of the origin, destination, route, and intermediate stops.

(2) "Charter bus" means a motor vehicle with a minimum seating capacity of thirty-three, including the driver, that is hired to transport a person or group of persons traveling from one location to another for a common purpose. A charter bus does not provide regular route service from one location to another.

(3) "Chartering party" means a person or group of persons who share a personal or professional relationship whereby all such persons are members of the same affiliated group, including a family, business, religious group, social organization, or professional organization. "Chartering party" does not include groups of unrelated persons brought together by a carrier, transportation broker, or other third party.

(4) "Children's activity bus" means a motor vehicle that transports groups of eight or more children, eighteen years of age or younger, and any adults over eighteen years of age accompanying or participating with the group, to or from activities that are sponsored by nonprofit organizations entitled to a tax exemption under the federal "Internal Revenue Code of 1986", as amended, or the transportation of children to and from school, school-related activities, or school-sanctioned activities to the extent that such transportation is not provided by the school or school district or the school or school district's transportation contractors.

(5) "Commercial location" means a place where goods or services are bought, sold, or exchanged.

(6) "Fire crew transport" means a motor vehicle that transports people engaged in fighting wildfires.

(7) "Luxury limousine" means a chauffeur-driven, luxury motor vehicle as defined by the commission by rule.

(8) "Luxury limousine service" means a specialized, luxurious transportation service provided on a prearranged, charter basis. "Luxury limousine service" does not include taxicab service or any service provided between fixed points over regular routes at regular intervals.

(9) "Off-road scenic charter" means a motor vehicle that transports passengers, on a charter basis, to scenic points within Colorado, originating and terminating at the same location and using a route that is wholly or partly off of paved roads. "Off-road scenic charter" does not include the transport of passengers to commercial locations.

Source: L. 2011: Entire article added, (HB 11-1198), ch. 127, p. 409, § 1, effective August 10.

Cross references: For the "Internal Revenue Code of 1986", see title 26 of the United States Code.

40-10.1-302. Permit requirements. (1) (a) A person shall not operate or offer to operate a charter bus, children's activity bus, fire crew transport, luxury limousine, or off-road scenic charter in intrastate commerce without first having obtained a permit therefor from the commission in accordance with this part 3.

(b) A person may apply for a permit under this part 3 to the commission in such form and with such information as the commission may require.

(2) Except as otherwise provided in section 40-10.1-112 (4), the commission shall issue a permit to a motor carrier of passengers under this part 3 upon completion of the application and compliance with the financial responsibility requirements of this article.

Source: L. 2011: Entire article added, (HB 11-1198), ch. 127, p. 410, § 1, effective August 10.

40-10.1-303. Livery license plates - rules. (1) The commission shall either:

(a) Create a document that a person authorized to provide luxury limousine service under this article may use to verify to the department of revenue or its authorized agent that the person provides such service; or

(b) Create a system to electronically verify to the department of revenue or its authorized agent that the person is authorized to provide luxury limousine service under this article.

(2) Upon request, the commission shall provide the document to the person with such authority or the electronic verification to the department of revenue or its authorized agent.

(3) The commission may promulgate rules to implement this section and to enforce section 42-3-235, C.R.S.

Source: L. 2011: Entire article added, (HB 11-1198), ch. 127, p. 411, § 1, effective August 10.

PART 4

MOTOR CARRIERS OF TOWED MOTOR VEHICLES

40-10.1-401. Permit requirements. (1) (a) A person shall not operate or offer to operate as a towing carrier in intrastate commerce without first having obtained a permit therefor from the commission in accordance with this article.

(b) A person may apply for a permit under this part 4 to the commission in such form and with such information as the commission may require. Permits are valid for one year after the date of issuance.

(2) The commission may deny an application under this part 4 of a person who has, within the immediately preceding five years, been convicted of, or pled guilty or nolo contendere to, a felony. The commission may also deny an application under this part 4 or refuse to renew the permit of a towing carrier based upon a determination that the towing carrier or any of its owners, principals, officers, members, partners, or directors has not satisfied a civil penalty arising out of any administrative or enforcement action brought by the commission.

(3) (a) Except as otherwise provided in subsection (2) of this section and section 40-10.1-112 (4), the commission shall issue a permit to a towing carrier upon completion of the application and the filing of proof of workers' compensation insurance coverage in accordance with the "Workers' Compensation Act of Colorado", articles 40 to 47 of title 8, C.R.S., and with the financial responsibility requirements of this article and may attach to the permit and to the exercise of the rights granted by the permit such restrictions, terms, and conditions, including altering the rates and charges of the applicant, as are reasonably deemed necessary for the protection of the property of the public.

(b) If a towing carrier violates this article, any other applicable provision of law, or any rule or order of the commission issued under this article and as a result is ordered by a court or by the commission to pay a fine or civil penalty that the towing carrier subsequently fails to pay in full within the time prescribed for payment, then:

(I) The commission may immediately revoke the towing carrier's operating authority; and

(II) The towing carrier, its owners, principals, officers, members, partners, and directors, and any other entity owned or operated by one or more of those owners, principals, officers, members, partners, or directors, may be disqualified from obtaining or renewing any operating authority under this article for a period of five years after the date on which the fine or civil penalty was due. The period of disqualification pursuant to this subparagraph (II) is in addition to, and not in lieu of, and does not affect, any other penalty or period of disqualification, including the period of disqualification specified in section 40-10.1-112 (4).

(c) A towing carrier's facilities and vehicles are subject to inspection by the commission and by authorized personnel of the Colorado state patrol, which shall promptly report to the commission concerning any violations revealed by an inspection.

Source: L. 2011: Entire article added, (HB 11-1198), ch. 127, p. 411, § 1, effective August 10. L. 2012: Entire section amended, (HB 12-1327), ch. 217, p. 931, § 2, effective May 24.

Editor's note: Section 6 of chapter 217, Session Laws of Colorado 2012, provides that the act amending this section applies to towing carriers that applied for permits on, before, or after May 24, 2012.

ANNOTATION

No property right to be on tow list. Towing carriers do not have an unqualified property right to be included on the rotation tow list of the Colorado state patrol by virtue of their per-

mits issued as required by this section. *Jam Action, Inc. v. Colo. State Patrol*, 890 P.2d 210 (Colo. App. 1994) (decided prior to 2011 reorganization of motor carrier statutes).

40-10.1-402. Verification of authority - notice of requirement for designated license plates - rules - repeal. (1) (a) The commission shall either:

(I) Create a document that a person authorized to operate as a towing carrier under this article may use to verify to the department of revenue or the department's authorized agent that the person is so authorized; or

(II) Create a system to electronically verify to the department of revenue or the

department's authorized agent that the person is authorized to provide towing services under this part 4.

(b) Upon request, the commission shall provide the document to the person with such authority or the electronic verification to the department of revenue or the department's authorized agent.

(2) The commission may promulgate rules to implement this section and to enforce section 42-3-235.5, C.R.S.

(3) (a) By January 1, 2013, the commission shall notify each person authorized to provide towing services under this article of the requirements of section 42-3-235.5, C.R.S.

(b) This subsection (3) is repealed, effective July 1, 2013.

Source: L. 2012: Entire section added, (HB 12-1327), ch. 217, p. 933, § 3, effective May 24.

Editor's note: Section 6 of chapter 217, Session Laws of Colorado 2012, provides that the act adding this section applies to towing carriers that applied for permits on, before, or after May 24, 2012.

PART 5

MOTOR CARRIERS OF HOUSEHOLD GOODS

40-10.1-501. Definitions. As used in this part 5, unless the context otherwise requires:

(1) "Accessorial service" means any service performed by a mover that results in a charge to the shipper and is incidental to the transportation service, including valuation coverage; preparation of written inventory; equipment, including dollies, hand trucks, pads, blankets, and straps; storage, packing, unpacking, or crating of articles; hoisting or lowering; waiting time; long carry, which is defined as carrying articles excessive distances between the mover's vehicle and the residence; overtime loading and unloading; reweighing; disassembly or reassembly; elevator or stair carrying; boxing or servicing of appliances; and furnishing of packing or crating materials. "Accessorial service" also includes services not performed by the mover but by a third party at the request of the shipper or mover if the charges for such services are to be paid to the mover by the shipper at or prior to the time of delivery.

(2) "Contract" means a written document, approved by the shipper in writing before the performance of any service, that authorizes services from the named mover and lists the services and all costs associated with the transportation of household goods and accessorial services to be performed.

(3) "Estimate" means a written document that sets forth the total cost and the basis of such costs related to a shipper's move, including transportation or accessorial services.

(4) "Storage" means warehousing of the shipper's goods while under the care, custody, and control of the mover.

Source: L. 2011: Entire article added, (HB 11-1198), ch. 127, p. 412, § 1, effective August 10.

40-10.1-502. Permit requirements - issuance by ports of entry. (1) (a) A person shall not operate or offer to operate as a mover in intrastate commerce pursuant to this article, or advertise services as a mover, without first having obtained a permit from the commission in accordance with this part 5.

(b) A mover shall annually apply for a permit under this part 5 to the commission in such form and with such information as the commission may require.

(2) The commission may deny an application under this part 5 or refuse to renew the permit of any mover based upon a determination that the mover, or any of its directors, officers, owners, or general partners has not satisfied a civil penalty arising out of any administrative or enforcement action brought by the commission.

(3) Except as otherwise provided in subsection (2) of this section and section 40-10.1-112 (4), the commission shall issue a permit to a mover upon completion of the application and compliance with the financial responsibility requirements of this article.

(4) A permit is not valid for a mover transacting business at any location other than those designated in its application unless the mover first notifies the commission in writing of any change of location. A permit issued under this section is not assignable, and the mover is not permitted to conduct business under more than one name except as shown on its permit. A mover desiring to change its name or location at a time other than upon renewal of a permit shall notify the commission of such change.

(5) (a) The Colorado state patrol may issue, through a port of entry weigh station created pursuant to article 8 of title 42, C.R.S., a temporary household goods mover permit. The temporary permit is valid for fifteen consecutive days and is not renewable. A mover or its successor who has been issued a temporary permit is not eligible for a subsequent temporary permit.

(b) A temporary permit shall not be approved until the applicant:

(I) Provides evidence of financial responsibility as required by section 40-10.1-107;

(II) Signs a verification, under penalty of perjury as specified in section 24-4-104 (13) (a), C.R.S., that the applicant meets the financial responsibility required by section 40-10.1-107; and

(III) Pays the fees required by section 40-10.1-111 (1) (e) and (1) (f). The Colorado state patrol shall transmit the fees to the state treasurer, who shall credit them to the public utilities commission motor carrier fund pursuant to section 40-10.1-111 (4).

(c) If a mover applied for and received a temporary permit pursuant to this subsection (5), the mover is not subject, during the period covered by the temporary permit, to a penalty for failure to have a permanent permit.

Source: L. 2011: Entire article added, (HB 11-1198), ch. 127, p. 412, § 1, effective August 10. **L. 2012:** (5)(a) and (5)(b)(III) amended, (HB 12-1019), ch. 135, p. 466, § 8, effective July 1.

40-10.1-503. Enforcement of carrier's lien. A mover without a current and valid permit issued under this part 5 is not entitled to acquire or enforce a carrier's lien under section 4-7-307 or 4-7-308, C.R.S.

Source: L. 2011: Entire article added, (HB 11-1198), ch. 127, p. 413, § 1, effective August 10.

40-10.1-504. Advertising. (1) No mover, nor any officer, agent, employee, or representative of the mover, shall advertise a transportation service in a name other than that in which the mover's permit is held.

(2) Each advertisement of a mover shall include the phrase "CO PUC permit no. ____" and the physical address of the mover.

Source: L. 2011: Entire article added, (HB 11-1198), ch. 127, p. 413, § 1, effective August 10.

40-10.1-505. Contracts for service. (1) At or before the time of commencing work, a mover that provides any moving or accessorial services shall leave with the shipper a contract as specified by the commission containing the information listed in this subsection (1). The contract must be signed and dated by the shipper and the mover and must include:

(a) The name, telephone number, and physical address where the mover's employees are available during normal business hours;

(b) The date the document is prepared and the proposed date of the move;

(c) The name and address of the shipper, the addresses where the goods are to be picked up and delivered, and a telephone number where the shipper may be reached;

(d) The name, telephone number, and physical address of a location where the goods will be held pending further transportation, including situations where the mover retains possession of goods pending resolution of a fee dispute with the shipper;

(e) An itemized breakdown and description of costs or rates and services for transportation and accessorial services to be provided during a move or storage of household goods;

(f) Acceptable forms of payment. A mover shall accept a minimum of two of the following four forms of payment:

(I) Cash;

(II) Cashier's check, money order, or traveler's check;

(III) A valid personal check, showing upon its face the name and address of the shipper or authorized representative; or

(IV) A valid credit card.

(g) Any other items as designated by the rules of the commission.

(2) A mover shall clearly and conspicuously disclose to the shipper in the contract the forms of payments the mover will accept from those categories described in paragraph (f) of subsection (1) of this section.

(3) Each contract must include the phrase "(name of mover) is permitted with the public utilities commission of the state of Colorado as a mover. Permit no. ____."

(4) At or before the time of commencing work, the mover shall leave with the shipper a consumer advisement. The mover shall retain a copy of the consumer advisement, signed and dated by the shipper, for at least three years and shall make the copy available to the commission upon request. The consumer advisement shall be in substantially the following form:

Consumer Advisement

Intrastate movers in Colorado are regulated by the Colorado public utilities commission (PUC). Each mover should have a PUC permit number. You are encouraged to contact the PUC to confirm that the mover you are using is indeed permitted in Colorado.

A mover that is not permitted may **not** withhold any of your property to enforce payment of money due under the contract ("carrier's lien").

A mover must include its PUC permit number, true name, and physical (street) address in all advertisements.

You should be aware that the total price of any household move can change, based on a number of factors that may include at least the following:

- Additional services you request at the time of the move;
- Additional items to be moved that were not included in the mover's original estimate;
- Changes to the location or accessibility of building entrances, at either end of the move, that were not included in the mover's original estimate; and
- Changes to the previously agreed date of pickup or delivery.

You should also be aware that, in case of a dispute between you and the mover, Colorado has an arbitration process available to resolve the dispute without going to court.

If you have any questions, you are encouraged to call the PUC for guidance on your rights and obligations.

I acknowledge that I have been given a copy of this consumer advisement to keep for my records.

Signed _____ (shipper).

40-10.1-506. Delivery and storage of household goods. (1) A mover shall relinquish household goods to a shipper and shall place the goods inside a shipper's dwelling unless the shipper has not tendered payment in the amount specified in a contract signed and dated by the shipper. A mover shall not refuse to relinquish prescription medicines, medical equipment, medical devices, or goods for use by children, including children's furniture, clothing, or toys, under any circumstances.

(2) A mover shall not refuse to relinquish household goods to a shipper or fail to place the goods inside a shipper's dwelling based on the mover's refusal to accept an acceptable form of payment.

(3) A mover that lawfully refuses to relinquish a shipper's household goods may place the goods in storage until payment is tendered; however, the mover shall notify the shipper of the location where the goods are stored and the amount due within five days after receipt of a written request for that information from the shipper, which request shall include the address where the shipper may receive the notice. A mover shall not require a prospective shipper to waive any rights or requirements under this section.

Source: L. 2011: Entire article added, (HB 11-1198), ch. 127, p. 416, § 1, effective August 10.

40-10.1-507. Binding arbitration. In the event of a dispute between a mover and a shipper concerning the amount charged for services or concerning lost or damaged goods, the mover shall offer the shipper the opportunity to participate in binding arbitration under the uniform rules for better business bureau binding arbitration or a substantially similar binding arbitration process promulgated by the council of better business bureaus, incorporated, or its successor organization. If the shipper accepts the offer to arbitrate, the mover shall participate in good faith in the arbitration process and shall agree to be bound by the arbitrator's award.

Source: L. 2011: Entire article added, (HB 11-1198), ch. 127, p. 416, § 1, effective August 10.

ARTICLE 10.5

Unified Carrier Registration System

40-10.5-101. Definitions.

40-10.5-102. Registration required - rules of commission.

40-10.5-101. Definitions. As used in this article, unless the context otherwise requires:

(1) "Commission" means the public utilities commission of the state of Colorado.

(2) "Unified carrier registration system" means the unified carrier registration system authorized by section 4305 of the federal "Unified Carrier Registration Act of 2005", 49 U.S.C. sec. 14504a, as amended.

Source: L. 2006: Entire article added, p. 1093, § 1, effective August 7.

40-10.5-102. Registration required - rules of commission. (1) On and after the repeal of sections 40-10-120 and 40-11-115, which occurred on September 25, 2007, a motor carrier, motor private carrier, broker, freight forwarder, leasing company, or other person required to register with the United States department of transportation under the unified carrier registration system:

(a) Shall not engage in, or contract for, any interstate transportation of persons or property on any public highway in this state without first so registering; and

(b) Shall comply with all applicable rules of the commission.

(2) For purposes of carrying out the provisions of this article and relevant federal statutes and rules, the commission:

- (a) Shall participate in the uniform carrier registration system;
- (b) Is vested with the legal authority to administer the unified carrier registration agreement for the state of Colorado; and
- (c) Has the power to promulgate such rules as are necessary for the proper administration and enforcement of this article. Such rules may include, without limitation, rules establishing registration fees and other fees sufficient to cover the direct and indirect costs of administration and enforcement of this article. All fees collected under this article shall be transmitted to the state treasurer, who shall credit them to the public utilities commission motor carrier fund, created in section 40-2-110.5.

Source: L. 2006: Entire article added, p. 1093, § 1, effective August 7. L. 2009: IP(1) amended, (SB 09-292), ch. 369, p. 1983, § 123, effective August 5.

Editor's note: Sections 40-10-120 and 40-11-115, referred to in subsection (1), were repealed, effective September 25, 2007.

ARTICLE 11

Contract Motor Carriers

40-11-101 to 40-11-117. (Repealed)

Source: L. 2011: Entire article repealed, (HB 11-1198), ch. 127, p. 416, § 2, effective August 10.

Editor's note: This article was numbered as article 11 of chapter 115, C.R.S. 1963. For amendments to this article prior to its repeal in 2011, consult the 2010 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

Cross references: For current provisions concerning contract carriers, see article 10.1 of this title.

ARTICLE 11.5

Independent Contractors - Motor Carriers

40-11.5-101. Independent contractors - motor carriers. 40-11.5-102. Lease provisions.

40-11.5-101. Independent contractors - motor carriers. Notwithstanding article 10.1 of this title, common carriers and contract carriers may use independent contractors.

Source: L. 90: Entire article added, p. 1762, § 1, effective June 8. L. 2011: Entire section amended, (HB 11-1198), ch. 127, p. 424, § 21, effective August 10.

ANNOTATION

The definition of an “independent contractor” under this article was intended to apply to the Workers’ Compensation Act. Frank C.

Klein & Co. v. Colo. Comp. Ins. Auth., 859 P.2d 323 (Colo. App. 1993).

40-11.5-102. Lease provisions. (1) Leases between motor carriers or contract carriers and independent contractors may contain, but need not be limited to, the following provisions:

- (a) (I) The independent contractor, working with a certificated taxi or limousine carrier, may either lease a motor vehicle owned by the certificated carrier or may own the motor vehicle and lease it to the certificated carrier, who may release the vehicle to the independent contractor.

(II) The independent contractor, working with a certificated common carrier or contract carrier, other than a certificated taxi or limousine carrier, may own the motor vehicle and lease it to the certificated carrier.

(b) The lease may require the independent contractor to be instructed in the method of the carrier's operation, and to be familiar with federal, state, and municipal statutes, ordinances, and regulations. The lease may further require the certificated carrier or contract carrier to enforce compliance with such federal, state, and municipal statutes, ordinances, and regulations by the independent contractor. Compliance with the provisions of this paragraph (b) shall not affect the status of the independent contractor as an independent contractor for purposes of this article.

(c) The lease may provide for the transportation services to be accomplished personally by the independent contractor.

(d) The lease may provide for uniformity, on the body of the motor vehicle being used, of color and any written displays.

(e) The lease may provide for periodic driver safety training.

(f) The lease may provide for some control over any assistant working with the independent contractor relating to the enforcement of, and compliance with, federal, state, and municipal statutes, ordinances, and regulations.

(g) The lease may establish a specific number of hours to complete a particular shipment of goods and may provide for the creation of shifts which are primarily created to make available transportation equipment on a basis established to meet public need and necessity, and to provide adequate service to the public at all times.

(h) The lease may provide for certain regulations in the event radio telecommunication procedures are used between the certificated carrier or contract carrier and the driver of the vehicle.

(i) The lease may provide that the independent contractor only work for the certificated carrier or contract carrier as a driver during the time the independent contractor is operating the motor vehicle pursuant to the lease.

(j) The lease may prohibit the independent contractor from individually advertising the services being offered while driving for the certificated carrier or contract carrier pursuant to the terms of the lease.

(k) The lease may provide for the carrier to pay the independent contractor's fees when the carrier accepts charge vouchers for services rendered to customers.

(2) The lease may be terminated by any party, but nothing in this section shall be construed as relieving an independent contractor from the obligation of completing an accepted trip.

(3) The lease need not be for a term certain.

(4) Leases containing provisions pursuant to paragraphs (a), (b), (e), (f), (g), (h), and (i) of subsection (1) of this section shall be presumed prima facie evidence of an independent contractor relationship between the parties to the lease. This presumption may be overcome by clear and convincing evidence of an employment relationship between the parties to the lease considering only factors not in the lease. Leases containing the other optional provisions shall not change the characterization of the relationship evidenced by the lease.

(5) (a) Any lease or contract executed pursuant to this section shall provide for coverage under workers' compensation or a private insurance policy that provides similar coverage.

(b) For purposes of this subsection (5), "similar coverage" means disability insurance for on and off the job injury, health insurance, and life insurance. The specifications of such insurance, including the amount of any deductible, shall meet or exceed standards set by the division of insurance in the department of regulatory agencies, and such standards shall specify that the benefits offered by such insurance coverage shall be at least comparable to the benefits offered under the workers' compensation system.

(c) The lease shall provide for the payment of such coverage by either the lessor or lessee. If the lease provides for the lessee to pay for such coverage, proof of coverage shall be maintained by the lessor for the duration of the lease and the lessor shall not have liability for failure of compliance by the lessee.

Source: L. 90: Entire article added, p. 1762, § 1, effective June 8. L. 92: (4) amended and (5) added, p. 1800, § 4, effective June 6. L. 2004: (5)(b) amended, p. 906, § 34, effective May 21.

ANNOTATION

The definition of an “independent contractor” under this article was intended to apply to the Workers’ Compensation Act. Frank C. Klein & Co. v. Colo. Comp. Ins. Auth., 859 P.2d 323 (Colo. App. 1993); USF Distribution Servs., Inc. v. Indus. Claim Appeals Office, 111 P.3d 529 (Colo. App. 2004).

Presumption of independent contractor status overcome pursuant to subsection (4). Frank C. Klein & Co. v. Colo. Comp. Ins. Auth., 859 P.2d 323 (Colo. App. 1993); USF Distribution Servs., Inc. v. Indus. Claim Appeals Office, 111 P.3d 529 (Colo. App. 2004).

Claimant could establish his or her status as an “employee” for workers’ compensation purposes either by overcoming the presumption established by subsection (4) with clear and convincing evidence or by showing that he or she was not offered coverage that satisfied the requirements of subsection (5). USF Distribution Servs., Inc. v. Indus. Claim Appeals Office, 111 P.3d 529 (Colo. App. 2004).

Presumption of an independent contractor relationship could apply to the determination

of the status of a worker as employee or independent contractor for unemployment tax liability purposes. If all necessary conditions concerning lease provisions are satisfied, a presumption of an independent contractor relationship can arise under subsection (4) of this section, which would conflict with, and take precedence over, the otherwise applicable two-part statutory test under § 8-70-115 (1)(b) for unemployment tax liability purposes. SZL, Inc. v. Indus. Claim Appeals Office, 254 P.3d 1180 (Colo. App. 2011).

“Similar coverage” construed. The coverage required by subsection (5)(b) must not contain benefit caps or time limits more restrictive than those in a policy of workers’ compensation insurance complying with the Workers’ Compensation Act. Moreover, the lease agreement must do more than simply inform the driver of his or her responsibility to obtain such coverage; it must actually include the coverage. USF Distribution Servs., Inc. v. Indus. Claim Appeals Office, 111 P.3d 529 (Colo. App. 2004).

ARTICLE 12

Commercial Carriers - Motor Vehicles

40-12-101 to 40-12-114. (Repealed)

Source: L. 78: Entire article repealed, p. 521, § 8, effective July 1.

Editor’s note: This article was numbered as article 10 of chapter 115, C.R.S. 1963. For amendments to this article prior to its repeal in 1978, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

ARTICLE 13

Towing Carriers - Motor Vehicles

40-13-101 to 40-13-112. (Repealed)

Source: L. 2011: Entire article repealed, (HB 11-1198), ch. 127, p. 416, § 2, effective August 10.

Editor’s note: This article was numbered as article 14 of chapter 115, C.R.S. 1963. For amendments to this article prior to its repeal in 2011, consult the 2010 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

Cross references: For current provisions concerning towing carriers, see article 10.1 of this title.

ARTICLE 14

Carriers of Household Goods

40-14-101 to 40-14-114. (Repealed)

Source: L. 2011: Entire article repealed, (HB 11-1198), ch. 127, p. 416, § 2, effective August 10.

Editor’s note: This article was added in 1984, repealed in 1995, and recreated and reenacted in 2003. For amendments to this article prior to its repeal in 2011, consult the 2010 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

Cross references: For current provisions concerning carriers of household goods, see article 10.1 of this title.

ARTICLE 15

Intrastate Telecommunications Services

Editor’s note: This article was added in 1984. This article was repealed and reenacted in 1987, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1987, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers are shown in editor’s notes following those sections that were relocated.

PART 1

GENERAL PROVISIONS

- 40-15-101. Legislative declaration.
- 40-15-102. Definitions.
- 40-15-103. Application of part.
- 40-15-104. Powers of local government.
- 40-15-105. Nondiscriminatory access charges.
- 40-15-106. Cross-subsidization prohibited - illegal restraint of trade.
- 40-15-107. Powers of commission - inspection of books and documents - confidentiality of information obtained through audit.
- 40-15-108. Cost methodologies.
- 40-15-109. Assurance of interconnections - averaging of rates.
- 40-15-110. Provision of regulated and de-regulated service.
- 40-15-111. Regulation of the discontinuation or rearrangement of basic local exchange service - measured or message rate service not required.
- 40-15-112. Unauthorized change of telecommunications provider.
- 40-15-113. Unauthorized charge for services.

PART 2

REGULATED TELECOMMUNICATIONS SERVICES

- 40-15-201. Regulation by commission.
- 40-15-202. Certificate required.
- 40-15-203. Manner of regulation - refraining from regulation.
- 40-15-203.5. Simplified regulatory treatment for rural telecommunications providers.
- 40-15-204. Transfer of certificate.
- 40-15-205. Violations.
- 40-15-206. Regulation of the discontinuation or rearrangement of basic local exchange service - measured or message rate service not required.
- 40-15-207. Reclassification of services and products.
- 40-15-208. High cost support mechanism - Colorado high cost administration fund - creation - purpose - operation - rules.

PART 3

EMERGING COMPETITIVE TELECOMMUNICATIONS SERVICE

- 40-15-301. Regulation by the commission.
- 40-15-302. Manner of regulation - rules.

40-15-302.5.	Resellers of toll services - registration required.	40-15-502.	pose and scope of part.
40-15-303.	Transfer of certificate.	40-15-503.	Expressions of state policy.
40-15-304.	Violations.		Opening of competitive local exchange market - process of negotiation and rule-making
40-15-305.	Time period for consideration of deregulation of emerging competitive telecommunications service.		- issues to be considered by commission.
40-15-306.	IntraLATA interexchange services.	40-15-503.5.	Financial assurance.
40-15-307.	Switched access.	40-15-504.	Working support group - duties - composition - repeal. (Repealed)
40-15-308.	Private line services. (Repealed)	40-15-505.	Committee on telecommunications policy - creation - duties - repeal. (Repealed)

PART 4

DEREGULATION

40-15-401.	Services, products, and providers exempt from regulation.	40-15-507.	Funding and appropriations - telecommunications policy development fund - creation - repeal. (Repealed)
40-15-402.	No regulation by the commission - no certificate required.	40-15-508.	Local exchange administration fund - repeal. (Repealed)
40-15-403.	General assembly may reregulate.	40-15-509.	Transfer of certificate.
40-15-404.	Dispute - interconnection or access.	40-15-510.	Violations.

PART 5

TELECOMMUNICATIONS POLICY
AND PLANNING

40-15-501.	Legislative declaration - pur-
------------	--------------------------------

PART 1

GENERAL PROVISIONS

40-15-101. Legislative declaration. The general assembly hereby finds, determines, and declares that it is the policy of the state of Colorado to promote a competitive telecommunications marketplace while protecting and maintaining the wide availability of high-quality telecommunications services. Such goals are best achieved by legislation that brings telecommunications regulation into the modern era by guaranteeing the affordability of basic telephone service while fostering free market competition within the telecommunications industry. The general assembly further finds that the technological advancements and increased customer choices for telecommunications services generated by such market competition will enhance Colorado's economic development and play a critical role in Colorado's economic future. However, the general assembly recognizes that the strength of competitive force varies widely between markets and products and services. Therefore, to foster, encourage, and accelerate the continuing emergence of a competitive telecommunications environment, the general assembly declares that flexible regulatory treatments are appropriate for different telecommunications services.

Source: L. 87: Entire article R&RE, p. 1476, § 1, effective July 2.

40-15-102. Definitions. As used in this article, unless the context otherwise requires:

- (1) "Access" means special access and switched access.
- (2) "Advanced features" means custom calling features known as speed dialing, 3-way calling, call forwarding, and call waiting.
- (3) "Basic local exchange service" or "basic service" means the telecommunications service which provides a local dial tone line and local usage necessary to place or receive

a call within an exchange area and any other services or features that may be added by the commission under section 40-15-502 (2).

(4) "Centron and centron-like services" means services which provide custom switching features which include but are not limited to distributive dial tone, select number screening, toll restriction and screening, nonattendant busy out, nonattend and call transfer, and select trunk hunting and screening.

(5) "Commission" means the public utilities commission of the state of Colorado.

(6) "Deregulated telecommunications services" means telecommunications services not subject to the jurisdiction of the commission pursuant to part 4 of this article.

(6.5) "Distributed equitably" means that distribution by the commission of high cost support mechanism funding to eligible providers shall be accomplished using regulatory principles that are neutral in their effect, that do not favor one class of providers over another, and that do not cause any eligible telecommunications provider to experience a reduction in its high cost support mechanism support revenue requirement based upon commission rules that are not applicable to other telecommunications providers.

(7) "Emerging competitive telecommunications services" means telecommunications services subject to regulation by the commission pursuant to part 3 of this article.

(8) "Exchange area" means a geographic area established by the commission, which consists of one or more central offices together with associated facilities which are used in providing basic local exchange service.

(9) "Functionally equivalent" refers to services or products which perform the same or similar tasks or functions to obtain substantially the same result at reasonably comparable prices.

(10) "Informational services" means nonstandard services provided to customers by means of personnel and facilities which include personalized intercept, synthesized voice messages, specialized bill services, and personalized number services.

(11) "Interexchange provider" means a person who provides telecommunications services between exchange areas.

(12) "Interexchange telecommunications services" means telephone services, not included in basic local exchange service, and which are priced based upon usage.

(13) "InterLATA" means telecommunications services between LATAs.

(14) "InterLATA interexchange telecommunications service" means long-distance service between LATAs.

(15) "IntraLATA" means telecommunications service provided within one LATA.

(16) "IntraLATA interexchange telecommunications service" means long-distance service within a LATA.

(17) "LATA" means each local access and transport area which has been designated in this state by the commission. A LATA may encompass more than one contiguous local exchange area in this state which serves common social, economic, or other purposes, even where such area transcends municipal or other local governmental boundaries.

(18) "Local exchange provider" means any person authorized by the commission to provide basic local exchange service.

(19) "New products and services" means any new product or service introduced separately or in combination with other products and services after January 1, 1988, which is not functionally required to provide basic local exchange service and any new product or service which is introduced after January 1, 1988, which is not a repackaged current product or service or a direct replacement for a regulated product or service. Repackaging any product or service deregulated under part 4 of this article with any service regulated under part 2 or 3 of this article shall not be considered a new product or service.

(19.3) "Nondiscriminatory and competitively neutral basis" means that decisions by the commission concerning the distribution of high cost support mechanism funding to eligible providers shall be made using regulatory principles that are neutral in their effect, that do not favor one class of providers over another, and that do not result in the imposition of regulatory requirements or costs on one class of eligible providers that are not imposed on others.

(19.5) "Nonoptional operator services" means operator services requiring an operator for individualized call processing or specialized or alternative billing, including, without

limitation, credit card calls, calls billed to a third number, collect calls, and person-to-person calls.

(20) "Operator services" means services, other than directory assistance, provided either by live operators or by the use of recordings or computer-voice interaction to enable customers to receive individualized and select telephone call processing or specialized or alternative billing functions. "Operator services" includes nonoptional operator services, optional operator services, and operator services necessary for the provision of basic local exchange service.

(20.3) "Operator services necessary for the provision of basic local exchange service" means operator services provided when operator intervention is required to complete a local call or obtain access to emergency services or to directory assistance.

(20.6) "Optional operator services" means operator services not defined in subsection (19.5) or (20.3) of this section, including, without limitation, operator services provided in connection with conference calling, foreign language translation, operator services to provide telephone service to inmates at penal institutions, and voice messaging.

(21) "Premium services" means any enhanced or improved product or service offered by a telecommunications provider which is not functionally required for the provision of basic local exchange or interexchange service and which the customer may purchase at his option.

(22) "Private line service" means any point-to-point or point-to-multipoint service dedicated to the exclusive use of an end user for the transmission of any telecommunications services.

(23) (a) "Private telecommunications network" means a system, including the construction, maintenance, or operation of such system, for the provision of telecommunications service, or any portion of such service, by a person or entity for the sole and exclusive use of such person or entity and not for resale, directly or indirectly.

(b) "Private telecommunications network" also includes:

(I) Any telecommunications service, the operation, facilities, or premises of which are or may be shared by energy utilities, used solely and exclusively by and for such utilities and not for resale, directly or indirectly; and

(II) A telecommunications service owned or leased by a college, as defined in section 23-3-103 (1), C.R.S., used solely and exclusively by and for such college and not for resale, directly or indirectly, for the purpose of providing services to:

(A) Students residing in housing owned by or affiliated with such college, students registered and enrolled at such college, and invited guests of such students; or

(B) Faculty, staff, or concessionaires of such college or the invited guests of such faculty, staff, or concessionaires.

(c) Construction, maintenance, or operation of a private telecommunications network shall not constitute the provision of public utility service, and such network shall not be subject to any of the provisions of this article or of articles 1 to 7 of this title.

(24) "Regulated telecommunications services" means telecommunications services treated as public utility services subject to the jurisdiction of the commission.

(24.5) "Rural telecommunications provider" means a local exchange provider that meets one or more of the following conditions:

(a) Provides common carrier service to any local exchange carrier study area, as defined by the commission, that does not include either:

(I) Any incorporated place of ten thousand inhabitants or more, or any part thereof, based on the most recently available population statistics of the United States bureau of the census; or

(II) Any territory, incorporated or unincorporated, included in an urbanized area, as defined by the United States bureau of the census as of August 10, 1993;

(b) Provides telephone exchange service, including exchange access, to fewer than fifty thousand access lines;

(c) Provides telephone exchange service to any local exchange carrier study area, as defined by the commission, with fewer than one hundred thousand access lines; or

(d) Has less than fifteen percent of its access lines in communities of more than fifty thousand inhabitants.

(25) “Special access” means any point-to-point or point-to-multipoint service provided by a local exchange provider dedicated to the exclusive use of any interexchange provider for the transmission of any telecommunications services.

(26) “Special arrangements” means custom assemblies of optional manufactured products which allow users to select nonstandard interfaces and switched or dedicated facilities in combinations for select, specialized custom applications, including but not limited to combinations of microwave, coaxial or copper cable, fiber optics, multiplexing equipment, or specialized electronics. “Special arrangements” does not include access.

(27) “Special assemblies” means services provided to customers who require special or nonstandard conditioning for interoffice or intraoffice connections or image-data use interruptions for combination lines.

(28) “Switched access” means the services or facilities furnished by a local exchange company to interexchange providers which allow them to use the basic exchange network for origination or termination of interexchange telecommunications services.

(29) “Telecommunications service” means the electronic or optical transmission of information between separate points by prearranged means.

(30) “Toll reseller” means a person who provides toll services to end-use customers by using the transmission facilities, including without limitation wire, cable, optical fiber, or satellite or terrestrial radio signals, of another person. A toll reseller may, but need not, possess its own switching facilities.

(31) “Toll service” means a type of telecommunications service, commonly known as long-distance service, that is provided on an intrastate basis between LATAs and within LATAs and that is:

- (a) Not included as a part of basic local exchange service;
- (b) Provided between local calling areas; and
- (c) Billed to the customer separately from basic local exchange service.

Source: **L. 87:** Entire article R&RE, p. 1477, § 1, effective July 2. **L. 94:** (19.5), (20.3), and (20.6) added and (20) amended, p. 1063, § 1, effective May 4. **L. 95:** (3) amended, p. 756, § 3, effective May 24. **L. 97:** (23) amended, p. 59, § 1, effective March 24. **L. 98:** (30) and (31) added, p. 845, § 3, effective May 26. **L. 2000:** (24.5) added, p. 46, § 1, effective March 10; (20) amended, p. 418, § 1, effective April 14. **L. 2003:** (19.5) and (20.6) amended, p. 2591, § 1, effective June 5. **L. 2005:** (6.5) and (19.3) added, p. 465, § 1, effective July 1.

Editor’s note: This section is similar to former § 40-15-101 as it existed prior to 1987.

ANNOTATION

Basic local exchange service. Although the public utilities commission may add services or features to the general definition of basic service, the bundling of non-telecommunications services or features with the required basic telecommunications services and the charging of a commensurately higher price that exceeds the rate cap stated in § 40-15-502 does not comport with the public policy goals stated in that section. *Colo. Office of Consumer Counsel v. Colo. Pub. Utils. Comm’n*, 42 P.3d 23 (Colo. 2002).

Interexchange provider. A company that provides a call transfer service that allows a subscriber to place intrastate telephone calls outside of the subscriber’s local calling area without incurring long-distance toll charges is an “interexchange provider” pursuant to subsection (11). *Avicomm, Inc. v. Colo. Pub. Utils. Comm’n*, 955 P.2d 1023 (Colo. 1998).

Interexchange telecommunications services. A company that provides a call transfer service that allows a subscriber to place intrastate telephone calls outside of the subscriber’s local calling area without incurring long-distance toll charges provides “interexchange telecommunications services” pursuant to subsection (12). *Avicomm, Inc. v. Colo. Pub. Utils. Comm’n*, 955 P.2d 1023 (Colo. 1998).

Telecommunications service. A company that provides a call transfer service that allows a subscriber to place intrastate telephone calls outside of the subscriber’s local calling area without incurring long-distance toll charges provides “telecommunications service” pursuant to subsection (29). *Avicomm, Inc. v. Colo. Pub. Utils. Comm’n*, 955 P.2d 1023 (Colo. 1998).

The department of corrections is not a provider of telecommunications service as de-

fined in this section and therefore not subject to review or regulation by the public utilities commission with respect to inmate telephone sys-

tem. *Powell v. Colo. Pub. Utils. Comm'n*, 956 P.2d 608 (Colo. 1998).

40-15-103. Application of part. The provisions of this part 1 shall apply throughout this article, unless specifically otherwise stated.

Source: L. 87: Entire article R&RE, p. 1479, § 1, effective July 2.

40-15-104. Powers of local government. Nothing in this article shall be construed to supersede any existing powers of a local government.

Source: L. 87: Entire article R&RE, p. 1479, § 1, effective July 2.

40-15-105. Nondiscriminatory access charges. (1) No local exchange provider shall, as to its pricing and provision of access, make or grant any preference or advantage to any person providing telecommunications service between exchanges nor subject any such person to, nor itself take advantage of, any prejudice or competitive disadvantage for providing access to the local exchange network. Access charges by a local exchange provider shall be cost-based, as determined by the commission, but shall not exceed its average price by rate element and by type of access in effect in the state of Colorado on July 1, 1987.

(2) At its option, any rural telecommunications provider may, in lieu of the provisions of subsection (1) of this section, remain under the jurisdiction of the commission pursuant to part 2 of this article. A rural telecommunications provider operating under this subsection (2) may at any time apply to the commission for regulatory relief under section 40-15-203 or 40-15-207. Such rural telecommunications provider, upon the granting of regulatory relief, shall provide access services under the conditions established in subsection (1) of this section; except that the commission shall set the maximum price for access services for such provider.

(3) Contracts for access pursuant to subsection (1) of this section shall be filed with the commission and open to review by other purchasers of such access to assure compliance with the provisions of this section. Prior to such review, the purchaser desiring such review shall execute a nondisclosure agreement as determined by the commission for the protection of business and trade secrets.

Source: L. 87: Entire article R&RE, p. 1479, § 1, effective July 2. L. 2000: (2) amended, p. 47, § 2, effective March 10.

ANNOTATION

Rates set by commission for interLATA access charge and intraLATA toll rates do not unreasonably discriminate against resellers and result in "price squeeze". When establishing an intraLATA toll rate, the commission is under no obligation to a require bell operating company to impute to itself an access charge similar to one imposed on resellers. Wholesale rates approved by commission and charged to resellers for intraLATA toll services are not discriminatory, even though in some mileage bonds and at some times of the day such rates exceed the retail rates charged by bell operating company to its own customers. *Consumer Counsel v. P.U.C.*, 786 P.2d 1086 (Colo. 1990) (decided under section as it existed prior to the 1987 repeal and reenactment of this article.)

Subsection (1) is not meant to apply to companies that provide basic local residential and business exchange services. "Access", as used in subsection (1), is a defined term that refers to services provided to interexchange providers. *Integrated Network Servs. v. PUC*, 875 P.2d 1373 (Colo. 1994).

Specter of discrimination would be raised contrary to subsection (1) if providers of call transfer services that allow a subscriber to place intrastate telephone calls outside of the subscriber's local calling area without incurring long-distance toll charges were allowed to purchase from an exchange tariff rather than an access tariff. *Avicomm, Inc. v. Colo. Pub. Utils. Comm'n*, 955 P.2d 1023 (Colo. 1998).

40-15-106. Cross-subsidization prohibited - illegal restraint of trade. The price of telecommunications services or products which are not subject to the jurisdiction of the commission shall not be priced below cost by use of subsidization from customers of services and products subject to the jurisdiction of the commission, and any such cross-subsidization is deemed to be an illegal restraint of trade subject to the provisions of article 4 of title 6, C.R.S.

Source: L. 87: Entire article R&RE, p. 1479, § 1, effective July 2.

40-15-107. Powers of commission - inspection of books and documents - confidentiality of information obtained through audit. (1) The commission shall administer and enforce all provisions of this article, and, in addition to any other powers under articles 1 to 7 of this title, the commission has the right to inspect the books and documents of the local exchange provider. The local exchange provider shall supply additional relevant and material information to the commission as needed. In addition, the commission has the right to inspect the books and records of any affiliate of a local exchange provider which provides telecommunications service under part 2, 3, or 4 of this article, if, in the provision of such service, the affiliate uses a plant or incurs costs that are joint and common to the provision of any basic local exchange service of the local exchange provider regulated under part 2 of this article.

(2) (a) Except as otherwise provided in paragraph (b) of this subsection (2), all information, documents, and copies thereof provided to the commission, a commissioner, or any person employed by the commission in connection with an audit, whether such audit is conducted pursuant to this section or pursuant to any other authority granted to the commission by law, shall be given confidential treatment and shall not be made public by the commission or any other person without either:

(I) The prior written consent of the person providing such information, documents, or copies; or

(II) A court order issued pursuant to section 24-72-204 (5), C.R.S.

(b) This subsection (2) shall not be construed to shield from disclosure information, documents, and copies thereof that are in the commission's possession through the exercise of the commission's audit authority and that are otherwise subject to disclosure under the Colorado open records law, part 2 of article 72 of title 24, C.R.S. The commission may consider whether to change the status of reports provided to it on a nonconfidential basis.

(3) The commission shall have no authority to regulate telephone or telecommunications service from inmates at penal institutions.

Source: L. 87: Entire article R&RE, p. 1480, § 1, effective July 2. L. 99: Entire section amended, p. 184, § 1, effective March 31. L. 2003: (3) added, p. 2591, § 2, effective June 5.

Editor's note: This section is similar to former § 40-15-105 as it existed prior to 1987.

40-15-108. Cost methodologies. (1) Any local exchange provider which provides facilities or equipment for use by interstate users or providers of telecommunications services shall separate all investments and expenses associated therewith according to applicable federal separations procedures and agreements.

(2) Any provider of telecommunications service which offers both regulated and deregulated telecommunications service shall segregate its intrastate investments and expenses in accordance with allocation methodologies as prescribed by the commission to ensure that deregulated telecommunications services are not subsidized by regulated telecommunications services.

Source: L. 87: Entire article R&RE, p. 1480, § 1, effective July 2.

40-15-109. Assurance of interconnections - averaging of rates. (1) If a local exchange provider does not have interconnection with an interexchange provider, the

commission may order any provider of interexchange service in the state to interconnect with the local exchange provider. Nothing in this subsection (1) shall require a rural telecommunications provider to provide interexchange telecommunications service.

(2) All providers of interexchange voice grade telecommunications service shall average their interexchange voice grade rates on a statewide basis. Nothing in this section shall be construed to prohibit volume discounts or other discounts in promotional offerings.

(3) The commission may provide for just and equitable compensation upon application of an interexchange provider subject to subsection (1) or (2) of this section.

Source: L. 87: Entire article R&RE, p. 1480, § 1, effective July 2. L. 2000: (1) amended, p. 47, § 3, effective March 10.

40-15-110. Provision of regulated and deregulated service. Nothing in this article shall be construed to preclude a single entity from offering and providing services under parts 2, 3, and 4 of this article.

Source: L. 87: Entire article R&RE, p. 1480, § 1, effective July 2.

40-15-111. Regulation of the discontinuation or rearrangement of basic local exchange service - measured or message rate service not required. (1) Every local exchange provider shall continue to offer and provide basic local exchange service in any exchange area it serves immediately prior to July 2, 1996, unless the commission determines that an alternative provider offers or provides functionally equivalent service to the customers in such exchange area.

(2) Rearrangements of exchange areas shall require a determination by the commission that such rearrangement will promote the public interest and welfare and will not adversely impact the public switched network of the affected local exchange provider or such provider's financial integrity.

(3) Measured or message rate service for end user customers shall not be required in order for such customers to obtain basic local exchange service unless the commission so orders.

(4) A telecommunications provider shall not base its charges for basic local exchange service on the volume or amount of data or voice traffic of an individual subscriber except with the prior approval of the commission following notice and the opportunity for a hearing.

Source: L. 95: Entire section added, p. 755, § 2, effective May 24. L. 99: (2) amended, p. 185, § 2, effective March 31.

40-15-112. Unauthorized change of telecommunications provider. (1) No provider of telecommunications service shall request the transfer of a customer's account, wholly or in part, to another provider of the same or a similar telecommunications service unless one or more of the following conditions has been met:

(a) The provider to whom the customer's account is to be transferred has obtained from the customer a document, signed by the customer, that contains a clear, conspicuous, and unequivocal request by the customer for a change of provider; or

(b) The provider to whom the customer's account is to be transferred has obtained the customer's oral authorization for the transfer and can furnish proof of such authorization through verification by an independent third party, electronic records, or any other manner prescribed by the commission by rule.

(2) (a) If the customer is not an individual, a document, authorization, or request referenced in subsection (1) of this section shall be valid only if given by an authorized representative of the customer, who shall provide proof of such authority.

(b) A document shall not be valid under paragraph (a) of subsection (1) of this section if it is presented to the customer for signature in connection with a sweepstakes or other game of chance.

(3) A telecommunications provider who initiates an unauthorized change in a customer's telecommunications provider in violation of this section is liable:

(a) To the customer, the customer's previously selected provider, or both, as determined by the commission, for all intrastate long distance charges, interstate long distance charges, local exchange service charges, provider switching fees, the value of any premiums to which the customer would have been entitled, and other relevant charges incurred by the customer during the period of the unauthorized change; and

(b) To the customer's local exchange provider for the change fees for the unauthorized change and reinstating the customer to the original provider.

Source: L. 98: Entire section added, p. 843, § 1, effective May 26.

40-15-113. Unauthorized charge for services. (1) A provider of telecommunications services shall not engage in the following activities:

(a) Charging a customer for goods or services without the customer's authorization;

(b) Adding charges for goods or services to the customer's bill without the customer's authorization; or

(c) When providing billing services for a telecommunications provider, knowingly or recklessly participating in charging or billing a customer for goods or services without the customer's authorization to add such goods or services to the customer's bill; except that, in accordance with federal law, this paragraph (c) shall not apply to a provider of wireless services.

(2) A customer is not liable for an amount charged in violation of this section.

(3) The commission shall maintain and keep available data on the incidence of complaints in violation of this section.

Source: L. 2001: Entire section added, p. 121, § 1, effective August 8.

PART 2

REGULATED TELECOMMUNICATIONS SERVICES

40-15-201. Regulation by commission. (1) For purposes of this part 2, except as otherwise provided in this title, each provider of basic local exchange service is declared to be affected with a public interest and a public utility subject to the provisions of articles 1 to 7 of this title, so far as applicable, including the regulation of all rates and charges pertaining to local exchange companies; except that, if a provider applies for and receives commission approval of an alternative form of regulation, or if a provider is a rural telecommunications provider subject to simplified regulatory treatment under section 40-15-203.5 or 40-15-503 (2) (d), the commission shall not consider the provider's overall rate of return or overall revenue requirements when determining the just and reasonable rate for a particular product or service. For a rural telecommunications provider subject to simplified regulatory treatment under section 40-15-203.5 or 40-15-503 (2) (d), basic local exchange service shall be regulated as provided in subsection (2) of this section. The commission may promulgate such rules as are necessary for the purpose of implementing the provisions of this part 2.

(2) The following products, services, and providers are declared to be subject to regulation pursuant to this part 2 and subject to potential reclassification under section 40-15-207:

(a) Basic local exchange service;

(b) Basic emergency service;

(c) (Deleted by amendment, L. 99, p. 185, § 3, effective March 31, 1999.)

(d) White page directory listing;

(e) Local exchange listed telephone number service;

(f) New products and services included in the definition of basic local exchange service;

(g) Dual tone multifrequency signaling;

(h) Operator services necessary for the provision of basic local exchange service.

Source: **L. 87:** Entire article R&RE, p. 1480, § 1, effective July 2. **L. 94:** (2)(h) added, p. 1064, § 2, effective May 4. **L. 99:** (1), (2)(c), and (2)(f) amended, p. 185, § 3, effective March 31. **L. 2000:** (1) amended, p. 47, § 4, effective March 10.

Editor's note: This section is similar to former § 40-15-102 as it existed prior to 1987.

40-15-202. Certificate required. (1) No provider of services regulated in this part 2 shall operate in this state except in accordance with the provisions of this part 2.

(2) No provider of services regulated in this part 2 shall operate within this state without first having obtained from the commission a certificate declaring that the present or future public convenience and necessity requires or will require such operation, unless such operation is authorized by section 40-5-102.

(3) The commission is authorized to issue a certificate of public convenience and necessity to a provider of services regulated in this part 2, and the commission may attach to the exercise of the rights granted by said certificate such terms and conditions as, in its judgment, the public convenience and necessity may require.

(4) A provider of services regulated in this part 2 holding a certificate of public convenience and necessity to offer or provide basic local exchange service or a provider of services regulated in this part 2 that had authority lawfully to offer or provide basic local exchange service immediately prior to July 2, 1987, without a certificate of public convenience and necessity shall continue to have such authority without having to make application to the commission for additional or continued authority.

Source: **L. 87:** Entire article R&RE, p. 1481, § 1, effective July 2. **L. 93:** Entire section amended, p. 2080, § 50, effective July 1.

Editor's note: This section is similar to former § 40-15-103 as it existed prior to 1987.

40-15-203. Manner of regulation - refraining from regulation.

(1) Repealed.

(2) In accordance with the provisions of this part 2, upon its own motion or application of a local exchange provider, the commission may refrain from regulation for competitive purposes, and authorize a local exchange provider to provide all or a portion of a private telecommunications network service under stated or negotiated terms to any person or entity that has acquired, is contemplating the acquisition of, or is operating a private telecommunications network.

(3) (a) At any time, the local exchange provider may file or the commission on its own motion may request that the provider file a verified application with the commission for refraining from regulation for competitive purposes. The application shall contain at least the following information:

(I) The name and address of the local exchange provider;

(II) The name and address of the person or entity that has acquired, is contemplating the acquisition of, or is operating a private telecommunications network;

(III) A statement of what products or services of the local exchange provider are offered or are being provided by such private telecommunications network;

(IV) A statement that the local exchange provider intends to provide a competitive alternative proposal to its existing regulated tariffs for such person or entity;

(V) A statement of what products and services of the local exchange provider will or may be subject to the competitive alternative.

(b) For the purpose of evaluating said application, the commission may require such additional information as it deems proper for the processing of the application.

(c) The local exchange provider's application for refraining from regulation for competitive purposes and all information contained therein shall remain confidential.

(d) The commission shall approve or deny any such application for refraining from regulation for competitive purposes within ten days after the filing of the application; except that the commission may, by order, defer the period within which it must act for one

additional period of five days. If the commission has not acted on any such application within the appropriate time period permitted, the application shall be deemed granted.

(4) (a) Upon approval of an application for refraining from regulation for competitive purposes, the local exchange provider may thereafter negotiate with the person or entity that intends to acquire, is contemplating the acquisition of, or is operating a private telecommunications network without regard to its obligations as a public utility under articles 1 to 7 of this title, including any tariffs of such company on file and approved by the commission.

(b) Within ten days after the conclusion of such negotiations between the local exchange provider and the entity which intends to acquire, is contemplating the acquisition of, or is operating a private telecommunications network, such provider shall file with the commission the final contract or other evidence of what basic local exchange service will be provided to such person or entity and what will be the charges and costs for such service. The final contracts or other evidence and all information contained therein shall remain confidential. Thereafter, for any basic local exchange service actually furnished through a private telecommunications network to a person or entity that is a party to a contract or other arrangement that has been filed with the commission pursuant to this section, such provider may also furnish or offer to furnish similar basic local exchange service to such person or entity operating such private telecommunications network without regard to its obligations as a public utility under articles 1 to 7 of this title, including any tariffs of such provider on file and approved by the commission. The commission shall not have the power to approve or disapprove services provided or the charges therefor, but this limitation shall not prevent the commission from considering and evaluating the same, and the costs associated therewith, for general regulatory purposes.

(5) The provisions of articles 3 and 6 of this title shall not apply to proceedings related to an application for refraining from regulation for competitive purposes submitted pursuant to subsection (2) of this section.

(6) (a) Upon its own motion or application of a provider of telecommunications service regulated under this part 2, the commission may, in lieu of reclassification of a service under section 40-15-207, examine whether it should refrain from regulation and may refrain from regulation for competitive need for specific telecommunications service otherwise subject to its jurisdiction.

(b) The commission shall approve or deny any such application for refraining from regulation for competitive need within one hundred eighty days after the filing of the application; except that the commission may, by order, defer the period within which it must act for one additional period of sixty days. If the commission has not acted on any such application within the appropriate time period permitted, the application shall be deemed granted.

(7) The authority granted the commission pursuant to this section is in addition to, and not a limitation upon, other powers of the commission, and such authority shall not be construed to be the sole or exclusive means by which the commission may refrain from regulation under this title.

(8) Notwithstanding the provisions of this section, no expenses incurred in the solicitation and the provision of services under this section shall be paid, directly or indirectly, by the subscribers of the applicant's regulated services.

Source: L. 87: Entire article R&RE, p. 1481, § 1, effective July 2. L. 95: (1) amended, p. 756, § 4, effective May 24.

Editor's note: (1) This section is similar to former § 40-15-104 as it existed prior to 1987.

(2) Subsection (1)(b) provided for the repeal of subsection (1), effective July 1, 1996. (See L. 95, p. 756.)

40-15-203.5. Simplified regulatory treatment for rural telecommunications providers. The commission, with due consideration of the public interest, quality of service, financial condition, and just and reasonable rates, shall grant regulatory treatment that is less comprehensive than otherwise provided for under this article to rural telecommunications

providers as defined in section 40-15-102 (24.5). The commission shall issue policy statements and rules and regulations that maintain reasonable regulatory oversight and that consider the cost of regulation in relation to the benefit derived from such regulation. These rules and regulations shall encourage the cost effective deployment and use of modern telecommunications technology. All proposed rules applicable to rural telecommunications providers that come before the commission shall consider the economic impact on rural telecommunications providers and their subscribers. The commission and rural telecommunications providers are encouraged to work together in a cooperative and proactive fashion to implement this section.

Source: L. 93: Entire section added, p. 2080, § 51, effective July 1. L. 2000: Entire section amended, p. 47, § 5, effective March 10.

40-15-204. Transfer of certificate. Any certificate of public convenience and necessity issued pursuant to this part 2 may be sold, assigned, leased, encumbered, or transferred as other property only upon authorization by the commission.

Source: L. 87: Entire article R&RE, p. 1483, § 1, effective July 2.

Editor's note: This section is similar to former § 40-15-106 as it existed prior to 1987.

40-15-205. Violations. Violations of this part 2 by a telecommunications provider are subject to enforcement and penalties as provided in article 7 of this title.

Source: L. 87: Entire article R&RE, p. 1483, § 1, effective July 2.

Editor's note: This section is similar to former § 40-15-109 as it existed prior to 1987.

40-15-206. Regulation of the discontinuation or rearrangement of basic local exchange service - measured or message rate service not required. (1) Every local exchange provider shall continue to offer and provide basic local exchange service in any exchange area it serves immediately prior to July 2, 1987, unless the commission determines that an alternative provider offers or provides functionally equivalent service to the customers in such exchange area.

(2) Rearrangements of exchange areas shall require a determination by the commission that such rearrangement will promote the public interest and welfare and will not adversely impact the public switched network of the affected local exchange provider or such provider's financial integrity.

(3) Measured or message rate service for end user customers shall not be required in order for such customers to obtain basic local exchange service unless the commission so orders.

Source: L. 87: Entire article R&RE, p. 1483, § 1, effective July 2. L. 99: (2) amended, p. 186, § 4, effective March 31.

40-15-207. Reclassification of services and products. (1) (a) Notwithstanding any other provision of this title, upon its own motion or upon application by any person, the commission shall regulate, pursuant to part 3 of this article, specific telecommunications services regulated under this part 2 upon a finding that there is effective competition in the relevant market for such service and that such regulation under part 3 of this article will promote the public interest and the provision of adequate and reliable service at just and reasonable rates.

(b) In determining whether effective competition for a specific telecommunications service exists, the commission shall make findings, after notice and opportunity for hearing, and shall issue an order based upon consideration of the following factors:

- (I) The extent of economic, technological, or other barriers to market entry and exit;
 - (II) The number of other providers offering similar services in the relevant geographic area;
 - (III) The ability of consumers in the relevant geographic area to obtain the service from other providers at reasonable and comparable rates, on comparable terms, and under comparable conditions;
 - (IV) The ability of any provider of such telecommunications service to affect prices or deter competition; and
 - (V) Such other factors as the commission deems appropriate.
- (c) In determining geographic areas under paragraph (b) of this subsection (1), the commission shall not be unduly restrictive.

Source: L. 87: Entire article R&RE, p. 1484, § 1, effective July 2.

40-15-208. High cost support mechanism - Colorado high cost administration fund - creation - purpose - operation - rules.

- (1) (Deleted by amendment, L. 2008, p. 1703, § 3, effective June 2, 2008.)
- (2) (a) (I) The commission is hereby authorized to establish a mechanism for the support of universal service, also referred to in this section as the “high cost support mechanism”, which shall operate in accordance with rules adopted by the commission. The primary purpose of the high cost support mechanism is to provide financial assistance as a support mechanism to local exchange providers to help make basic local exchange service affordable and allow such providers to be fully reimbursed for the difference between the reasonable costs incurred in making basic service available to their customers within a rural, high cost geographic support area and the price charged for such service, after taking into account any amounts received by such providers under price support mechanisms established by the federal government and by this state. The high cost support mechanism may also be used, to the extent necessary, to supplement any gifts, grants, and donations received pursuant to section 24-37.5-106 (3) (f), C.R.S., in assisting the office of information technology in preparing the statewide inventory of available broadband services as provided in section 24-37.5-106 (3), C.R.S.
- (II) The commission shall ensure that no local exchange provider is receiving funds from this or any other source that, together with local exchange service revenues, exceeds the cost of providing local exchange service to customers of such provider. The high cost support mechanism shall be supported and distributed equitably and on a nondiscriminatory, competitively neutral basis through a neutral assessment on all telecommunications service providers in Colorado.
- (b) On or before December 1 of each year, the commission shall submit a written report to the committees of reference in the senate and house of representatives that are assigned to hear telecommunications issues, in accordance with section 24-1-136, C.R.S., accounting for the operation of the high cost support mechanism during the preceding calendar year and containing the following information, at a minimum:
- (I) The total amount of money that the commission determined should constitute the high cost support mechanism from which distributions would be made;
 - (II) The total amount of money ordered to be contributed through a neutral assessment collected by each telecommunications service provider;
 - (III) The basis on which the contribution of each telecommunications service provider was calculated;
 - (IV) The benchmarks used and the basis on which the benchmarks were determined;
 - (V) The total amount of money that the commission determined should be distributed from the high cost support mechanism;
 - (VI) The total amount of money distributed to each telecommunications service provider from the high cost support mechanism;
 - (VII) The basis on which the distribution to telecommunications service providers was calculated;

(VIII) As to each telecommunications service provider receiving a distribution, the amount received by geographic support area and type of customer, the way in which the benefit of the distribution was applied or accounted for;

(IX) The proposed benchmarks, the proposed contributions to be collected through a neutral assessment on each telecommunications provider, and the proposed total amount of the high cost support mechanism from which distributions are to be made for the following calendar year; and

(X) The total amount of distributions made from the high cost support mechanism, directly or indirectly, and how they are balanced by rate reductions by all providers for the same period and a full accounting of and justification for any difference.

(c) If the report submitted pursuant to paragraph (b) of this subsection (2) contains a proposal for an increase in any of the amounts listed in subparagraph (IX) of said paragraph (b), such increase shall be suspended until March 31 of the following year.

(d) Repealed.

(3) (a) There is hereby created, in the state treasury, the Colorado high cost administration fund, referred to in this section as the "fund", which shall be used to reimburse the commission and its contractors for reasonable expenses incurred in the administration of the high cost support mechanism as determined by rules of the commission. The moneys in the fund that are to be used for the direct and indirect administrative costs incurred by the commission and its contractors shall be appropriated annually by the general assembly. At the end of any fiscal year, all unexpended and unencumbered moneys in the fund shall remain in the fund and shall not be credited or transferred to the general fund or any other fund. Based upon the high cost support mechanism, the balance remaining in the fund, and the amount appropriated annually by the general assembly for use by the commission, each year the commission shall determine the nondiscriminatory, competitively neutral assessment on all telecommunications service providers in Colorado that will be necessary to cover the cost of implementing and administering the high cost support mechanism. Only the moneys from such assessment for administering the high cost support mechanism shall be transmitted to the state treasurer, who shall credit the same to the fund. All interest derived from the deposit and investment of the fund shall remain in the fund and shall not revert to the general fund.

(b) Repealed.

(c) Notwithstanding any provision of paragraph (a) of this subsection (3) to the contrary, on July 31, 2009, the state treasurer shall deduct from the fund an amount equal to the amount transferred to the fund pursuant to Senate Bill 09-272, enacted in 2009, and transfer such amount to the general fund.

Source: L. 92: Entire section added, p. 2126, § 1, effective April 16. L. 95: Entire section amended, p. 756, § 5, effective May 24. L. 98: Entire section amended, p. 702, § 1, effective July 1. L. 2001: IP(2)(b) amended, p. 1181, § 23, effective August 8. L. 2008: (1) and (2)(a) amended, p. 1703, § 3, effective June 2. L. 2009: (2)(a), (2)(b)(II), (2)(b)(IX), (2)(b)(X), and (3) amended, (SB 09-272), ch. 209, p. 948, § 1, effective May 1; (3) amended, (SB 09-279), ch. 367, p. 1932, § 25, effective June 1.

Editor's note: (1) Subsection (2)(d)(II) provided for the repeal of subsection (2)(d), effective December 31, 1999. (See L. 98, p. 702.)

(2) Amendments to subsection (3) by Senate Bill 09-272 and Senate Bill 09-279 were harmonized.

(3) Subsection (3)(b)(II) provided for the repeal of subsection (3)(b), effective July 1, 2010. (See L. 2009, p. 948.)

PART 3

EMERGING COMPETITIVE TELECOMMUNICATIONS SERVICE

40-15-301. Regulation by the commission. (1) The commission shall regulate the terms and conditions, including rates and charges, under which telecommunications service

pursuant to this part 3 is offered and provided to customers exclusively in accordance with the provisions of sections 40-4-101 (1), 40-4-111, 40-4-112, and 40-5-105 and articles 2, 3, 6, and 7 of this title, unless otherwise specified in this article.

(2) The following telecommunications products, services, and providers are declared to be initially subject to regulation pursuant to this part 3 and subject to potential deregulation under section 40-15-305:

(a) Advanced features offered and provided to residential customers and nonresidential customers with no more than five lines;

(b) Premium services except as provided in section 40-15-401 (1) (f), (1) (g), (1) (h), and (1) (i);

(c) InterLATA toll;

(d) IntraLATA toll, subject to the provisions of section 40-15-306;

(e) Switched access, subject to the provisions of section 40-15-307;

(f) Private line service with a capacity of less than twenty-four voice grade circuits;

(g) Nonoptional operator services.

Source: L. 87: Entire article R&RE, p. 1484, § 1, effective July 2. L. 94: (2)(g) added, p. 1064, § 3, effective May 4. L. 2000: (2)(f) amended, p. 418, § 2, effective April 14.

Editor's note: This section is similar to former § 40-15-102 as it existed prior to 1987.

40-15-302. Manner of regulation - rules. (1) (a) The commission shall promulgate rules as may be appropriate to regulate services and products provided pursuant to this part 3. In promulgating such rules, the commission shall consider such alternatives to traditional rate of return regulations as flexible pricing, detariffing, and other such manner and methods of regulation as are deemed consistent with the general assembly's expression of intent pursuant to section 40-15-101. If a provider applies for and receives commission approval of an alternative form of regulation, or if a provider is a rural telecommunications provider subject to simplified regulatory treatment under section 40-15-203.5 or 40-15-503 (2) (d), the commission shall not consider the provider's overall rate of return or overall revenue requirements when determining the just and reasonable rate for a particular product or service. A local exchange provider that does not elect an alternative form of regulation and that is subject to rate of return regulation shall furnish such rate of return information as requested by the commission.

(b) (I) For a rural telecommunications provider subject to simplified regulatory treatment under section 40-15-203.5 or 40-15-503 (2) (d), price ceilings shall be established for all products and services regulated under this part 3 as follows:

(A) For switched access service, prices shall not rise above the level in effect on March 31, 1999; except that price ceilings may be adjusted by the commission to conform to its rules concerning the high cost support mechanism established under section 40-15-208 or to conform to any company filing that is subject to the commission's rate-of-return jurisdiction.

(B) For all other products and services, price ceilings shall be established by reference to the prices for such products and services in effect under an alternative form of regulation approved by the commission.

(II) This paragraph (b) shall not be construed to preclude a rural telecommunications provider from electing traditional rate-of-return regulation or requesting price regulation or another alternative form of regulation under part 5 of this article; and the fact of such election or request shall not be considered in connection with a proceeding to adjust prices for products or services offered under any alternative form of regulation.

(2) The commission shall promulgate rules and regulations for the certification of providers of emerging competitive telecommunications services, but nothing in this part 3 shall require the commission to certificate providers of telecommunications service regulated in this part 3.

(3) The provisions of section 40-15-206 pertaining to regulation of the discontinuation or rearrangement of basic local exchange service shall apply to all services and products regulated pursuant to this section.

(4) A provider of telecommunications service holding a certificate of public convenience and necessity to offer or provide services and products regulated pursuant to this part 3 immediately prior to July 2, 1987, shall continue to have such authority without having to make application to the commission for additional or continued authority.

(5) Consistent with the provisions of section 40-15-301 (1), rates for nonoptional operator services shall allow the provider of such services the opportunity to earn a just and reasonable return on the associated used and useful investment, including but not limited to equipment costs incurred to originate such services. Such rates shall be set at or below a single statewide benchmark rate as determined by the commission that is applicable to all providers, unless the commission approves a higher rate. The statewide benchmark rate shall apply to all nonoptional operator services regardless of whether such services are provided in connection with intraLATA or interLATA telecommunications service. If the commission approves a rate higher than the benchmark rate, and the commission determines that disclosure of the rate to customers is in the public interest, the commission may require the nonoptional operator services provider to orally disclose, to the person responsible for payment of the telephone call, the total charges for the call and that such charges are higher than the benchmark rate. The nonoptional operator services provider shall make such disclosure at no charge to the caller and before the call is connected, allowing the caller to disconnect before incurring any charges. If the commission finds, after notice and opportunity for a hearing, that a nonoptional operator services provider has violated this subsection (5), the commission may, in addition to such other enforcement powers as may be authorized in this title, order any regulated telecommunications service provider to block access to the nonoptional operator services provider for all intrastate operator-handled calls. A regulated telecommunications provider that blocks the access of a nonoptional operator services provider in compliance with an order of the commission and incurs attorney fees or costs to defend such action shall be entitled to recover its costs and attorney fees in each such proceeding. The commission shall promulgate rules necessary to implement this subsection (5).

Source: L. 87: Entire article R&RE, p. 1485, § 1, effective July 2. L. 93: (1) and (2) amended, p. 2081, § 52, effective July 1. L. 94: (5) added, p. 1064, § 4, effective May 4. L. 96: (5) amended, p. 365, § 1, effective August 7. L. 99: (1) amended, p. 186, § 5, effective March 31. L. 2000: (1)(a), IP(1)(b)(I), and (1)(b)(II) amended, p. 48, § 6, effective March 10; (5) amended, p. 418, § 3, effective April 14.

Editor's note: This section is similar to former § 40-15-104 as it existed prior to 1987.

40-15-302.5. Resellers of toll services - registration required. (1) Toll resellers shall register with the commission in a form satisfactory to the commission. Such registration shall include, at a minimum, the following information updated within fifteen days after any change:

- (a) The toll reseller's name and complete address;
- (b) All names under which the toll reseller does business;
- (c) All names and identification numbers under which the toll reseller has registered with the Colorado secretary of state or the Colorado department of revenue;
- (d) The name, title, address, and telephone number of an authorized representative to whom the commission may make inquiries; and
- (e) A toll-free telephone number to which consumer inquiries or complaints may be made.

(2) Toll resellers who register in accordance with subsection (1) of this section shall be exempt from regulation by the commission except as otherwise provided in this section.

(3) For the purpose of enforcing section 40-15-112, the commission may exercise any of the powers conferred under articles 1 to 7 of this title against a toll reseller and, in cases of complaints filed under section 40-6-108, may order a toll reseller to make due reparations to the complaining party.

(4) Pursuant to section 24-50-504 (2) (a), C.R.S., the commission shall enter into personal services contracts that create an independent contractor relationship for the administration of this section and section 40-15-112.

Source: L. 98: Entire section added, p. 844, § 2, effective May 26. L. 2004: (4) amended, p. 1703, § 48, effective July 1, 2005.

40-15-303. Transfer of certificate. Any certificate of public convenience and necessity issued pursuant to this part 3 may be sold, assigned, leased, encumbered, or transferred as other property only upon authorization by the commission.

Source: L. 87: Entire article R&RE, p. 1485, § 1, effective July 2.

Editor's note: This section is similar to former § 40-15-106 as it existed prior to 1987.

40-15-304. Violations. Violations of this part 3 by a telecommunications provider are subject to enforcement and penalties as provided in article 7 of this title.

Source: L. 87: Entire article R&RE, p. 1485, § 1, effective July 2.

Editor's note: This section is similar to former § 40-15-109 as it existed prior to 1987.

40-15-305. Time period for consideration of deregulation of emerging competitive telecommunications service. (1) (a) Notwithstanding any other provision of this title, upon its own motion or upon application by any person, the commission shall deregulate, pursuant to part 4 of this article, specific telecommunications services subject to this part 3 upon a finding that there is effective competition in the relevant market for such service and that such deregulation will promote the public interest and the provision of adequate and reliable service at just and reasonable rates.

(b) In determining whether effective competition for a specific telecommunications service exists, the commission shall make findings, after notice and opportunity for hearing, and shall issue an order based upon consideration of the following factors as the commission deems applicable in particular cases:

- (I) The extent of economic, technological, or other barriers to market entry and exit;
- (II) The number of other providers offering similar services;
- (III) The ability of consumers to obtain the service from other providers at reasonable and comparable rates, on comparable terms, and under comparable conditions;
- (IV) The ability of any provider of such telecommunications service to affect prices or deter competition;
- (V) Such other relevant and necessary factors, including but not limited to relevant geographic areas, as the commission deems appropriate.

(c) The commission shall approve or deny any such application for deregulation within one hundred eighty days after the filing of the application; except that the commission may, by order, defer the period within which it must act for one additional period of ninety days upon a finding that the proceeding cannot be completed within one hundred eighty days and that the additional time period is necessary for the commission to adequately and completely fulfill its duty under this subsection (1). If the commission has not acted on any such application within the appropriate time period permitted, the application shall be deemed granted.

(d) In determining geographic areas under paragraph (b) of this subsection (1), the commission shall not be unduly restrictive.

(2) Any telecommunications service or product not defined in part 1 of this article or not already classified pursuant to parts 2 to 4 of this article shall be classified as an emerging competitive telecommunications service under this part 3.

Source: L. 87: Entire article R&RE, p. 1486, § 1, effective July 2.

Editor's note: This section is similar to former § 40-15-110 as it existed prior to 1987.

40-15-306. IntraLATA interexchange services. IntraLATA interexchange telecommunications services shall be regulated in accordance with the provisions of this part 3; except that such services shall not automatically be deregulated as part 4 services pursuant to section 40-15-305 except upon application of the provider of such services. No interexchange provider shall market intraLATA interexchange telecommunications services without obtaining prior approval of the commission. An interexchange provider shall not be required to compensate a local exchange provider for incidental telecommunications services that occur after July 2, 1987.

Source: L. 87: Entire article R&RE, p. 1486, § 1, effective July 2.

40-15-307. Switched access. Switched access shall not be deregulated pursuant to section 40-15-305 prior to the enactment of enabling legislation authorizing such deregulation.

Source: L. 87: Entire article R&RE, p. 1487, § 1, effective July 2.

40-15-308. Private line services. (Repealed)

Source: L. 87: Entire article R&RE, p. 1487, § 1, effective July 2. **L. 93:** Entire section amended, p. 2081, § 53, effective July 1. **L. 2000:** Entire section repealed, p. 419, § 4, effective April 14.

PART 4

DEREGULATION

40-15-401. Services, products, and providers exempt from regulation. (1) The following products, services, and providers are exempt from regulation under this article or under the "Public Utilities Law" of the state of Colorado:

(a) Cable services as defined by section 602(5) of the federal "Cable Communications Policy Act of 1984";

(b) Cellular telecommunications services;

(c) Mobile radio service;

(d) Radio paging service;

(e) New products and services other than those included in the definition of basic local exchange service;

(f) Centron and centron-like services;

(g) Special arrangements;

(h) Special assemblies;

(i) Informational services;

(j) Optional operator services;

(k) Advanced features offered and provided to nonresidential customers with more than five lines;

(l) Special access;

(m) Public coin telephone service;

(n) Retail digital private line service;

(o) Retail private line service with a capacity of at least twenty-four voice grade circuits;

(p) Retail directory assistance.

Source: L. 87: Entire article R&RE, p. 1487, § 1, effective July 2. **L. 93:** (1)(e) amended, p. 2082, § 54, effective July 1. **L. 94:** (1)(j) amended, p. 1064, § 5, effective May 4. **L. 99:** (1)(e) amended and (1)(m) added, p. 187, § 6, effective March 31. **L. 2000:** (1) amended, p. 419, § 5, effective April 14. **L. 2008:** (1)(a) amended, p. 1915, § 133, effective August 5.

Cross references: For the "Public Utilities Law", see articles 1 to 7 of this title.

40-15-402. No regulation by the commission - no certificate required. (1) Nothing in articles 1 to 7 of this title or parts 2 and 3 of this article shall apply to deregulated services and products pursuant to this part 4.

(2) No certificate of public convenience and necessity shall be required for the provision of services under this part 4.

(3) The commission may not reclassify deregulated services or products under this part 4 or services and products deregulated by the commission pursuant to section 40-15-305 (1).

Source: L. 87: Entire article R&RE, p. 1487, § 1, effective July 2.

Editor's note: This section is similar to former § 40-15-108 as it existed prior to 1987.

40-15-403. General assembly may reregulate. Any telecommunications service or product deregulated pursuant to this part 4 may be reregulated by action of the general assembly.

Source: L. 87: Entire article R&RE, p. 1488, § 1, effective July 2.

40-15-404. Dispute - interconnection or access. In the event of a dispute between providers of telecommunications services or products deregulated pursuant to this part 4 concerning the terms, conditions, quality, or compensation for the interconnection or access of lines or facilities between providers, any such provider may apply to the commission for resolution of such dispute. After notice and hearing, the commission shall enter its decision resolving any such interconnection or access dispute.

Source: L. 87: Entire article R&RE, p. 1488, § 1, effective July 2.

PART 5

TELECOMMUNICATIONS POLICY AND PLANNING

Law reviews: For article, "Telecommunications Changes: State Opens Local Exchange Service to Competition", see 24 Colo. Law. 2147 (1995).

40-15-501. Legislative declaration - purpose and scope of part. (1) The general assembly hereby finds, determines, and declares that competition in the market for basic local exchange service will increase the choices available to customers and reduce the costs of such service. Accordingly, it is the policy of the state of Colorado to encourage competition in this market and strive to ensure that all consumers benefit from such increased competition. The commission is encouraged, where competition is not immediately possible, to utilize other interim marketplace mechanisms wherever possible, with the ultimate goal of replacing the regulatory framework established in part 2 of this article with a fully competitive telecommunications marketplace statewide as contemplated in this part 5.

(2) The general assembly further finds, determines, and declares that:

(a) Wise public policy relating to the telecommunications industry and the other crucial services it provides is in the interest of Colorado and its citizens;

(b) Sound and well-informed decisions need to be made on a continuing basis to ensure that the benefits of existing and new telecommunications services continue to be available to the greatest number of Colorado citizens;

(c) The involvement of telecommunications providers and others with experience and expertise in the area of telecommunications is essential to keep legislators informed of developing technology and evolving markets, thus to avoid costly errors and enhance the efficiency of the state's growing telecommunications network; and

(d) The rural nature of Colorado requires that special rules and support mechanisms be adopted to achieve the goal of ensuring that universal basic local exchange service be available to all residents of the state at reasonable rates. Rules adopted by the commission under this part 5 shall be designed to achieve this goal.

(3) This part 5 is enacted for the following purposes:

(a) To set forth, in concise fashion, the policy of this state in specific subject matter areas within the general topic of telecommunications, both for the guidance of the commission in carrying out its duties under this article and for the information of the citizens of Colorado;

(b) To create a framework for the identification of other subject matter areas should the need arise, the formulation of suggested policies in areas in which a policy direction has not yet been stated, and the reaching of consensus, wherever possible, among parties affected by such policies so as to minimize conflicts, ease the commission's considerable workload, and enhance the efficient delivery of telecommunications services to the public; and

(c) To adapt the regulatory structure of parts 2, 3, and 4 of this article to accommodate multiple providers of local exchange service and to permit alternate forms of regulation for providers of local exchange service.

Source: L. 95: Entire part added, p. 746, § 1, effective May 24.

40-15-502. Expressions of state policy. (1) Competitive local exchange market. Local exchange telecommunications markets shall be open to competition, under conditions determined by the commission by rule pursuant to this part 5, on or before July 1, 1996.

(2) **Basic service.** Basic service is the availability of high quality, minimum elements of telecommunications services, as defined by the commission, at just, reasonable, and affordable rates to all people of the state of Colorado. The commission shall conduct a proceeding when appropriate, but no later than July 1, 1999, and no less frequently than every three years to consider the revision of the definition of basic service, with the goal that every citizen of this state shall have access to a wider range of services at rates that are reasonably comparable as between urban and rural areas.

(3) **Universal basic service - affordability of basic service.** (a) The commission shall require the furtherance of universal basic service, toward the ultimate goal that basic service be available and affordable to all citizens of the state of Colorado. The general assembly acknowledges the use of low-income telephone assistance programs, including but not limited to "life-line" and "link-up", and telecommunications relay services for disabled telephone users to further the goal of universal service. The commission shall have the authority to regulate providers of telecommunications services to the extent necessary to assure that universal basic service is provided to all consumers in the state at fair, just, and reasonable rates.

(b) (I) Consistent with the public interest goal of maintaining affordable and just and reasonably priced basic local telecommunications service for all citizens of the state, the commission shall structure telecommunications regulation to achieve a transition to a fully competitive telecommunications market with the policy that prices for residential basic local exchange service, including zone charges, if any, do not rise above the levels determined by the commission.

(I.5) In determining the appropriate maximum price for residential basic service for each regulated provider, the commission:

(A) Shall consider the changes since May 24, 1995, in the costs of providing such service;

(B) Shall consider the changes since May 24, 1995, in the nationwide average price for comparable service;

(C) Shall consider flexible-pricing tariff options; and

(D) May, for any affected provider, consider the net revenues derived from other services regulated under part 2 or 3 of this article, with the exception of switched access service, notwithstanding any provision of section 40-15-201 to the contrary. Nothing in this sub-subparagraph (D) shall permit the commission to limit the affected provider's overall

rate of return or overall revenues when determining the appropriate maximum price for residential basic service for that provider.

(II) The commission may delay or deny a price increase for residential basic service if a provider is in substantial violation of the commission's rules governing quality of service or held service orders.

(III) This section shall not be construed to prohibit the commission from granting an increase in residential basic local exchange service rates for local exchange carriers under rate-of-return regulation if such increase was approved before May 24, 1995, or if, and to the extent that, such increase is necessary to recover a provider's costs associated with investments for network upgrades made for the purpose of provisioning residential basic local exchange service if such investments are approved or required by the commission and not previously included in the calculation of residential basic local exchange service rates.

(IV) (A) For service provided to residential customers outside the base rate area of a local exchange provider, the commission shall limit rate increases to maintain rates at affordable levels and shall employ universal service funding mechanisms as contemplated in subsection (5) of this section to compensate for the high cost of serving such customers in preference to allowing rate increases.

(B) If there are areas within a provider's base rate area, as determined by the commission, that are receiving subsidies, such areas may continue to receive subsidies or be eligible for funding under the universal service support funding mechanisms after July 1, 1996, at the commission's discretion.

(V) If and when additional elements are included in the definition of basic service as a result of review by the commission under subsection (2) of this section, prices may increase as is reasonably necessary to cover the cost and account for the inclusion of such additional elements.

(4) **Universal access to advanced service.** The general assembly acknowledges the goal of universal access to advanced service to all telecommunications consumers in this state. The commission shall consider the impact of opening entry to the local exchange market and shall determine whether additional support mechanisms may be necessary to promote this goal if competition for local exchange services fails to deliver advanced services in all areas of the state.

(5) **Universal service support mechanisms.** (a) In order to accomplish the goals of universal basic service, universal access to advanced service, and any revision of the definition of basic service under subsection (2) of this section, the commission shall create a system of support mechanisms to assist in the provision of such services in high-cost areas. These support mechanisms shall be funded equitably and on a nondiscriminatory, competitively neutral basis through assessments, which may include a rate element, on all telecommunications service providers in Colorado and shall be distributed equitably and on a nondiscriminatory, competitively neutral basis. For purposes of administering such support mechanisms, the commission shall divide the state into reasonably compact, competitively neutral geographic support areas. A provider's eligibility to receive support under the support mechanisms shall be conditioned upon the provider's offering basic service throughout an entire support area. The commission shall review the costs of basic service and shall administer such support mechanisms.

(b) A provider that offers basic local exchange service throughout an entire support area through use of its own facilities or on a resale basis may be qualified as a provider of last resort or may be eligible to receive universal service support, as determined by the commission. Resale shall be made available on a nondiscriminatory basis, as determined by the commission.

(c) A provider that fails to pay an assessment due and payable under paragraph (a) of this subsection (5) shall have its certificate revoked after notice and the opportunity for a hearing as provided in article 6 of this title.

(6) **Provider of last resort - duty to follow evolving definition of basic service.** (a) In all relevant geographic areas of the state, as defined by the commission, the commission shall designate at least one provider as the provider of last resort and adopt procedures for changing or terminating such designations. A provider of last resort

designation carries the responsibility to offer basic local exchange service to all consumers who request it.

(b) A person holding a certificate of public convenience and necessity to provide basic service shall be subject to the evolving definition of basic service developed by the commission under subsection (2) of this section and the system of financial support for universal service established by the commission under subsection (5) of this section.

(7) **Barriers to entry.** It is the policy of this state that all barriers to entry into the provision of telecommunications services in Colorado be removed as soon as is practicable, subject to the commission's authority to ensure quality of service and other matters as provided in this article.

Source: L. 95: Entire part added, p. 747, § 1, effective May 24. L. 98: (5)(a) amended, p. 705, § 2, effective July 1. L. 2008: (3)(b)(I) amended and (3)(b)(I.5) added, p. 1805, § 27, effective July 1.

ANNOTATION

Requirement to make available "white pages" listings for competing providers is authorized by this section. US West Commc'ns, Inc. v. Pub. Utils. Comm'n, 978 P.2d 671 (Colo. 1999).

Bundling does not provide implied exception to rate cap. Although the public utilities commission may add services or features to the general definition of basic service, the bundling

of non-telecommunications services or features with the required basic telecommunications services and the charging of a commensurately higher price that exceeds the rate cap stated in subsection (3)(b)(I) does not comport with the public policy goals stated in this section. Colo. Office of Consumer Counsel v. Colo. Pub. Utils. Comm'n, 42 P.3d 23 (Colo. 2002).

40-15-503. Opening of competitive local exchange market - process of negotiation and rule-making - issues to be considered by commission. (1) Commencing on or before May 24, 1995, and concluding on or before January 1, 1996, members of the working group identified in section 40-15-504 shall meet and attempt to reach consensus on proposed rules to be submitted to the commission for consideration and adoption as appropriate to implement section 40-15-502 (1).

(2) (a) On or before January 1, 1996, the commission shall initiate rule-making proceedings to implement section 40-15-502 (1). Rules adopted in such proceedings shall become effective on or before July 1, 1996. The commission shall grant substantial deference to the proposals submitted by the working group under subsection (1) of this section in regard to issues on which the working group reports it has reached consensus. Said rules shall be designed to foster and encourage the emergence of a competitive telecommunications marketplace and may include more active regulation of one provider than another or the imposition of geographic limits or other conditions on the authority granted to a provider. In addition, in adopting such rules, the commission shall consider the differences between the economic conditions of rural and urban areas.

(b) In adopting rules under paragraph (a) of this subsection (2), the commission shall adopt rules governing, and shall establish methods of paying for, without limitation, the following:

(I) Cost-based, nondiscriminatory carrier interconnection to essential facilities or functions, which shall be unbundled;

(II) Cost-based number portability and the competitively neutral administration of telephone numbering plans;

(III) Cost-based, open network architecture;

(IV) Terms and conditions for resale of services that enhance competition;

(V) Appropriate means of assessing, collecting, and distributing contributions to the Colorado high cost fund created in section 40-15-208 and any other financial support mechanisms adopted by the commission under section 40-15-502 (4); and

(VI) Access to emergency 911 service.

(c) (I) The commission shall consider changing to forms of price regulation other than rate-of-return regulation for any telecommunications provider that provides services regu-

lated under part 2 or 3 of this article and shall consider the conditions under which such a change may take place to ensure that telecommunications services continue to be available to all consumers in the state at fair, just, and reasonable rates. This paragraph (c) shall not be construed to limit the manner and methods of regulation available under section 40-15-302.

(II) As used in this paragraph (c), "price regulation" means a form of regulation that may contain, without limitation, any of the following elements:

- (A) Regulation of the price and quality of services;
- (B) Price floors and price ceilings;
- (C) Flexibility in pricing between price floors and price ceilings;
- (D) Modified tariff requirements;
- (E) Incentives for increased efficiency, productivity, and quality of service.

(d) The commission shall adopt rules providing for simplified regulatory treatment for rural telecommunications providers as defined in section 40-15-102 (24.5). Such simplified treatment may include, but shall not be limited to, optional methods of regulatory treatment that reduce regulatory requirements, reduce the financial burden of regulation, and allow pricing flexibility. Such simplified treatment may also allow extensions of time for the implementation of requirements under this part 5 in rural exchanges for which there are no competing basic local exchange providers certified.

(e) Applications for certificates of public convenience and necessity to provide basic local exchange service pursuant to this subsection (2) may be filed with the commission at any time after the effective date of the rules required. A person that, on or before January 1, 1995, held a certificate of public convenience and necessity to provide basic local exchange service under part 2 of this article and who still holds such certificate shall continue to have such authority without having to apply to the commission for additional or continued authority. No provider of local exchange services shall operate in this state without a certificate of public convenience and necessity.

(f) A telecommunications provider that is granted a certificate of public convenience and necessity to provide local exchange telecommunications service in competition with an incumbent provider of local exchange service shall be regulated under part 3 of this article unless the commission determines that the services of such provider are not subject to effective competition from the incumbent local exchange provider.

(g) (I) In adopting rules under paragraph (a) of this subsection (2), and in order to implement the provisions of this part 5 on or before July 1, 1996, as contemplated in said paragraph (a), the commission shall require that any telecommunications service provider that will provide unbundled facilities or functions, interconnection, services for resale, or local number portability pursuant to the rules adopted under said paragraph (a) shall file an advice letter with the commission to place into effect tariffs containing temporary interim rates, terms, and conditions of sale for those services. In connection with the filing of such tariffs, the commission shall initiate a temporary or emergency proceeding, pursuant to the authority granted in section 40-2-108 (2) or in article 6 of this title, having as its objective the issuance of orders approving such tariffs as filed or as modified by the commission and allowing such filed or modified tariffs to go into effect on or before July 1, 1996, subject to true-up and pending the effectiveness of commission tariffs as contemplated in subparagraph (II) of this paragraph (g) or of interconnection agreements adopted by negotiation or arbitration and approved by the commission pursuant to 47 U.S.C. sec. 252 (e), whichever first occurs.

(II) Immediately upon the issuance of orders approving temporary interim tariffs pursuant to subparagraph (I) of this paragraph (g), the commission shall initiate a proceeding under section 40-6-111, having as its objective the adoption of commission tariffs and the issuance of orders to effectuate any necessary true-up. For purposes of this subparagraph (II), the commission may, but need not, suspend any rate, fare, toll, rental, charge, classification, contract, practice, rule, or regulation as provided in section 40-6-111.

(III) Commission tariffs adopted pursuant to subparagraph (II) of this paragraph (g) shall supersede the temporary interim tariffs adopted pursuant to subparagraph (I) of this paragraph (g). Interconnection agreements adopted by negotiation or arbitration and approved by the commission pursuant to 47 U.S.C. sec. 252 (e) shall supersede both the

temporary interim tariffs and the commission tariffs, but only with regard to the specific services covered by such agreements and only to the extent that the terms of such agreements are held applicable to persons other than the parties to the agreements.

(IV) (A) In developing temporary interim tariffs, telecommunications service providers and the commission shall make every effort to ensure that the rates, terms, and conditions of sale to be set forth in such tariffs are based on cost and are nondiscriminatory. Such rates, terms, and conditions may include a reasonable profit.

(B) In adopting commission tariffs, the commission shall determine whether the rates, terms, and conditions of sale to be set forth in such tariffs are based on cost and are nondiscriminatory. Such rates, terms, and conditions of sale may include a reasonable profit.

(V) As used in this paragraph (g), "true-up" means recovery of the difference between:

(A) The rates paid under temporary interim tariffs before the adoption of commission tariffs or, if interconnection agreements as contemplated in subparagraph (III) of this paragraph (g) are in effect, the rates paid under temporary interim tariffs before the effective dates of such agreements; and

(B) The rates that would have been paid during the same time period had the commission tariffs or interconnection agreements been in effect instead of such temporary interim tariffs.

(VI) True-up shall be accomplished by means of lump-sum cash payments unless the commission orders another method of payment. If the commission orders a refund or an additional payment to be made at the time of true-up, such refund or additional payment shall be paid with interest at a rate to be determined by the commission.

(VII) In conducting a temporary or emergency proceeding under subparagraph (I) of this paragraph (g), the commission shall use its best efforts to afford all parties due process and to base its orders on the most reliable evidence available, taking into account the time constraints involved. When proceeding under article 6 of this title, the commission may shorten any time period set forth in said article 6 as reasonably necessary to have tariffs in effect by July 1, 1996.

(VIII) In all proceedings initiated pursuant to this paragraph (g), the burden of proof shall be on the telecommunications service provider.

(IX) The following entities shall be exempt from the requirements of this paragraph (g):

(A) A basic local exchange provider that serves only rural exchanges of ten thousand or fewer access lines;

(B) As to the interim rates, a college or vocational school as defined in section 23-3-103, C.R.S.

(h) The commission shall require by rule that any telecommunications service provider required to file temporary interim tariffs pursuant to paragraph (g) of this subsection (2) and, to the extent such a requirement is permissible under federal law, any basic local exchange provider that serves only rural exchanges of ten thousand or fewer access lines and that has received a bona fide request for interconnection shall file advice letters with the commission to place into effect temporary interim tariffs and commission tariffs for unbundled facilities or functions, interconnection, services for resale, or local number portability by such dates certain as the commission may determine by rule.

(3) During the period of negotiation and rule-making as contemplated in this section, the director of the commission may request, on a case-by-case basis, and the commission may grant, extensions to the statutorily directed times for completion of proceedings before the commission; except that no such extension shall be requested for proceedings under this section. During rule-making under this section, the commission may, on its own motion and on a case-by-case basis, grant such extensions; except that no such extension shall be granted for proceedings under this section.

Source: L. 95: Entire part added, p. 750, § 1, effective May 24. L. 96: (2)(g) and (2)(h) added, p. 706, § 1, effective May 15. L. 2000: (2)(d) amended, p. 48, § 7, effective March 10.

Editor's note: The internal reference in subsection (1) to § 40-15-504 refers to that section prior to its repeal on July 1, 1997.

ANNOTATION

Requirement to make available “white pages” listings for competing providers is authorized by this section. US West Commc’ns,

Inc. v. Pub. Utils. Comm’n, 978 P.2d 671 (Colo. 1999).

40-15-503.5. Financial assurance. (1) The commission may require regulated telecommunications service providers to post a bond or provide other security as a condition of obtaining a certificate, registration, or operating authority, whichever instrument or instruments apply. In setting the amount of the bond or security, the commission may consider the following criteria:

(a) The financial viability of the service provider, as evidenced by its audited financial statements and its general credit history;

(b) The total amount of deposits made by customers to the provider to obtain service and the aggregate amount of prepayments made by customers for monthly regulated service; and

(c) The history of the provider’s statutory payment obligations, including those to the Colorado high cost support mechanism, the Colorado telephone low-income assistance program, the Colorado telephone relay system, and the Colorado fixed utility fund.

(2) The commission may promulgate rules to implement this section and may impose additional criteria consistent with this section.

Source: L. 2003: Entire section added, p. 1700, § 7, effective May 14.

40-15-504. Working support group - duties - composition - repeal. (Repealed)

Source: L. 95: Entire part added, p. 752, § 1, effective May 24.

Editor’s note: Subsection (4) provided for the repeal of this section, effective July 1, 1997. (See L. 95, p. 752.)

40-15-505. Committee on telecommunications policy - creation - duties - repeal. (Repealed)

Source: L. 95: Entire part added, p. 753, § 1, effective May 24.

Editor’s note: Subsection (5) provided for the repeal of this section, effective July 1, 1997. (See L. 95, p. 753.)

40-15-506. Advisory committee to committee on telecommunications policy - creation - duties - repeal. (Repealed)

Source: L. 95: Entire part added, p. 754, § 1, effective May 24.

Editor’s note: Subsection (3) provided for the repeal of this section, effective July 1, 1997. (See L. 95, p. 754.)

40-15-507. Funding and appropriations - telecommunications policy development fund - creation - repeal. (Repealed)

Source: L. 95: Entire part added, p. 754, § 1, effective May 24.

Editor’s note: Subsection (2) provided for the repeal of this section, effective July 1, 1996. (See L. 95, p. 754.)

40-15-508. Local exchange administration fund - repeal. (Repealed)

Source: L. 95: Entire part added, p. 755, § 1, effective May 24.

Editor's note: Subsection (2) provided for the repeal of this section, effective July 1, 1999. (See L. 95, p. 755.)

40-15-509. Transfer of certificate. Any certificate of public convenience and necessity to provide local exchange service may be sold, assigned, leased, encumbered, or transferred as other property only upon authorization by the commission.

Source: L. 95: Entire part added, p. 755, § 1, effective May 24.

40-15-510. Violations. Violations of this part 5 by a telecommunications provider are subject to enforcement and penalties as provided in article 7 of this title.

Source: L. 95: Entire part added, p. 755, § 1, effective May 24.

ARTICLE 16**Motor Vehicle Carriers Exempt from
Regulation as Public Utilities****40-16-101 to 40-16-111. (Repealed)**

Source: L. 2011: Entire article repealed, (HB 11-1198), ch. 127, p. 416, § 2, effective August 10.

Editor's note: This article was added in 1985. For amendments to this article prior to its repeal in 2011, consult the 2010 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

Cross references: For current provisions concerning carriers that are not public utilities, see article 10.1 of this title.

ARTICLE 16.5**Carriers of Sludge****40-16.5-101 to 40-16.5-109. (Repealed)**

Source: L. 95: Entire article repealed, p. 1211, § 28, effective May 31.

Editor's note: This article was added in 1994 and was not amended prior to its repeal in 1995. For the text of this article prior to 1995, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

ARTICLE 17**Telecommunications Relay Services
for Disabled Telephone Users**

Editor's note: This article was added in 1989 and was not amended prior to 1992. The provisions of this article were repealed and reenacted in 1992, resulting in the addition, relocation, and elimination of sections as well as subject matter. For the text of this article prior to 1992, consult the

Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated.

40-17-101.	Legislative declaration.	40-17-104.	Colorado disabled telephone
40-17-102.	Definitions.		users fund - creation - pur-
40-17-103.	Commission - powers and duties.		pose.

40-17-101. Legislative declaration. (1) The general assembly hereby finds, determines, and declares that many of Colorado's residents are unable to utilize telecommunications facilities without assistance and are therefore disabled telephone users. Disabled telephone users include, but are not limited to, the deaf, the hard of hearing, the speech-impaired, the deaf-blind, and those with central nervous system disabilities. Disabled telephone users constitute a substantial and valuable resource within the United States and the state of Colorado, and this segment of our population needs access to telecommunications facilities in order to be contributing and productive members of our society. The role of telecommunications in our world today is inestimable. Telecommunications is the primary vehicle of commerce and industry, the means to convey and receive information and knowledge, and is one of the ways we communicate with others on a personal as well as business level. Telecommunications results in greater independence and self-sufficiency by expanding the channels for employment opportunities, the market for goods and services, human contact, and fellowship. Disabled telephone users should have equal access to this critical tool, not only for their own sake, but for the benefit of society at large. The ability to use telecommunications will enhance the business and personal lives of disabled telephone users, while stimulating and promoting economic development in Colorado. The general assembly recognizes the vitality and potential of Colorado's disabled, including disabled telephone users. Telecommunications is vital to our society, and its availability to disabled telephone users is an investment of benefit to all of Colorado.

(2) The general assembly therefore concludes that it is appropriate to provide access to telecommunications for disabled telephone users by establishing telecommunications relay services that replace and expand the dual party relay system required pursuant to this article as said article existed prior to July 1, 1992.

Source: L. 92: Entire article R&RE, p. 2132, § 1, effective July 1.

Editor's note: This section is similar to former § 40-17-101 as it existed prior to 1992.

40-17-102. Definitions. As used in this article, unless the context otherwise requires:

- (1) "Commission" means the public utilities commission of the state of Colorado.
- (2) "Local exchange company" means a telecommunications company that provides telephone access lines to members of the general public who are its customers.
- (3) "Telecommunications relay services" means any telecommunications transmission services that allow a person who has a hearing or speech disability to communicate by wire or radio in a manner that is functionally equivalent to the ability of a person who does not have a hearing or speech disability. Such term includes any service that enables two-way communication between a person who uses a telecommunications device or other nonvoice terminal device and a person who does not use such a device.
- (4) "Telephone access line" means the access to the local exchange network, as defined in tariffs approved by the commission, from the premises of an end user customer of a local exchange company to the telecommunications network to effect the transfer of information.

Source: L. 92: Entire article R&RE, p. 2133, § 1, effective July 1.

Editor's note: This section is similar to former § 40-17-102 as it existed prior to 1992.

40-17-103. Commission - powers and duties. (1) The commission shall administer and contract for telecommunications relay services.

(2) The commission shall adopt rules for the implementation of this article. The rules shall:

(a) Conform with section 401 of the federal "Americans with Disabilities Act of 1990", 47 U.S.C. sec. 225, including provision for state application to the federal communications commission for certification;

(b) Be consistent with the commission's quality of service rules;

(c) Require that providers relay communicated messages promptly and accurately, maintain the privacy of persons who receive telecommunications relay services, and preserve confidentiality of all parties in connection with relayed messages;

(d) Specify the types of calls that are included as telecommunications relay services, specifically requiring that the costs of any long-distance service or any other service that is not a basic local exchange service be borne by the disabled telephone user.

(3) The commission shall, through the promulgation of rules, develop and implement a mechanism to recover its costs and the cost to local exchange companies in implementing and administering telecommunications relay services required by this article. The mechanism shall, at a minimum, provide for the following:

(a) The assessment of a monthly surcharge on each telephone access line, which surcharge may be adjusted by the commission in accordance with paragraph (d) of this subsection (3). The monthly surcharge shall be an amount sufficient to reimburse the commission for its costs in developing, implementing, and administering telecommunications relay services, which administrative costs shall not exceed three percent of the total costs, to reimburse local exchange companies for their administrative costs in imposing and collecting the surcharge, and to cover the costs of providers in rendering the service.

(b) A requirement that the monthly surcharge be imposed upon and collected from each individual telephone access line provided by a local exchange company;

(c) A requirement that the surcharge be listed as a separate item that appears on each customer's monthly billing statement;

(d) An annual adjustment to the surcharge by the commission when necessary to accurately reflect a change in the cost of providing telecommunications relay services;

(e) The authority of a local exchange company to deduct and retain as reimbursement for its administrative costs an amount not to exceed three-quarters of one percent of the amount of total monthly surcharges collected by such local exchange company. In addition, the mechanism shall include a requirement that any remaining amount of moneys be transmitted to the state treasurer who shall credit the same to the "Colorado Disabled Telephone Users Fund" created by section 40-17-104.

(f) A requirement that each local exchange company maintain a record of the monthly surcharge imposed on each customer and collected by the local exchange company. The record of any monthly surcharge imposed and collected shall be maintained for three years from the date of billing. The commission may require an audit of a local exchange company's records, which audit shall be at the commission's expense.

(4) Repealed.

Source: L. 92: Entire article R&RE, p. 2134, § 1, effective July 1. L. 93: (3)(e) amended, p. 1794, § 93, effective June 6. L. 96: (4) repealed, p. 1225, § 32, effective August 7. L. 2001: (2)(a) amended, p. 1283, § 65, effective June 5.

Editor's note: This section is similar to former § 40-17-104 as it existed prior to 1992.

Cross references: For the legislative declaration contained in the 1996 act repealing subsection (4), see section 1 of chapter 237, Session Laws of Colorado 1996.

40-17-104. Colorado disabled telephone users fund - creation - purpose. (1) Except as otherwise authorized to be retained by section 40-17-103 (3) (e), all moneys collected by the local exchange companies in accordance with said section shall be transmitted to the state treasurer, who shall credit the same to the Colorado disabled

telephone users fund, which fund is hereby created and is referred to in this article as the “fund”. On July 1, 1992, any moneys in the Colorado disabled telephone users fund created by section 40-17-103, as said section existed prior to July 1, 1992, shall be credited to the fund as created by this section. The general assembly shall make annual appropriations out of such fund for the administration of the fund and shall make annual appropriations to the reading services for the blind cash fund, created in section 24-90-105.5 (5), C.R.S., for use by the state librarian in support of privately operated reading services for the blind. The moneys in such fund not used for administration of such fund, not used for the reading services for the blind cash fund, and not used for the Colorado commission for the deaf and hard of hearing cash fund created in section 26-21-107, C.R.S., are hereby continuously appropriated to the public utilities commission for the reimbursement of providers who render telecommunications services authorized by this article.

- (2) and (3) Repealed.
- (4) (a) Notwithstanding any provision of subsection (1) of this section to the contrary, the general assembly shall make annual appropriations from the Colorado disabled telephone users fund to the Colorado commission for the deaf and hard of hearing cash fund, created in section 26-21-107, C.R.S.
- (b) and (c) Repealed.
- (d) Notwithstanding any provision of subsection (1) of this section to the contrary, the general assembly shall make annual appropriations from the Colorado disabled telephone users fund to cover authorized expenses associated with the Colorado commission for individuals who are blind or visually impaired, created in article 8.7 of title 26, C.R.S. Any annual appropriation made from the Colorado disabled telephone users fund by the general assembly shall not exceed an amount of one hundred twelve thousand sixty-seven dollars.
- (5) and (6) (Deleted by amendment, L. 2006, p. 1170, § 1, effective May 25, 2006.)

Source: **L. 92:** Entire article R&RE, p. 2135, § 1, effective July 1. **L. 98:** Entire section amended, p. 1361, § 122, effective June 1. **L. 99:** (1) amended and (3) added, p. 971, § 1, effective May 28. **L. 2000:** (1) amended and (4) added, p. 1628, § 4, effective June 1. **L. 2002:** (5) added, p. 159, § 20, effective March 27; (4)(c) added, p. 777, § 3, effective May 30; (2) and (3) repealed, p. 1006, § 2, effective August 7; (3) repealed, p. 261, § 2, effective August 7. **L. 2003:** (6) added, p. 459, § 21, effective March 5. **L. 2006:** (4)(a), (5), and (6) amended, p. 1170, § 1, effective May 25. **L. 2007:** (4)(d) added, p. 1222, § 4, effective August 3.

Editor’s note: (1) This section is similar to former § 40-17-103 as it existed prior to 1992. (2) (a) Subsection (4)(b)(II) provided for the repeal of subsection (4)(b), effective July 1, 2001. (See L. 2000, p. 1628.) (b) Subsection (4)(c)(II) provided for the repeal of subsection (4)(c), effective July 1, 2003. (See L. 2002, p. 777.)

RAILROADS

ARTICLE 18

Rail Fixed Guideway System Safety Oversight

40-18-101.	Definitions.		rules.
40-18-102.	Rail fixed guideway system safety oversight program - commission may establish.	40-18-104.	Confidential investigative reports.
40-18-103.	Commission to promulgate	40-18-105.	Calculation and assessment of fees.

- 40-18-101. Definitions.** As used in this article, unless the context otherwise requires:
- (1) Repealed.
 - (2) “Commission” means the public utilities commission of the state of Colorado.
 - (3) “Rail fixed guideway system” means any light, heavy, or rapid rail system,

monorail, inclined plane, funicular, trolley, or automated guideway used to transport passengers that is not regulated by the federal railroad administration. The term "rail fixed guideway system" does not include funiculars that are passenger tramways as defined in section 25-5-702 (4) (c), C.R.S., and are subject to the jurisdiction of the Colorado passenger tramway safety board created in section 25-5-703, C.R.S.

(4) "System safety program plan" means a document adopted by a transit agency that details its safety policies, objectives, responsibilities, and procedures.

(5) "System safety program standard" means a safety standard developed by the commission in conformance with 49 CFR 659, "Rail Fixed Guideway Systems; State Safety Oversight".

(6) "Transit agency" means an entity operating a rail fixed guideway system.

Source: L. 97: Entire article added, p. 930, § 1, effective August 6. L. 2008: (1) repealed, p. 1807, § 31, effective July 1.

40-18-102. Rail fixed guideway system safety oversight program - commission may establish. The commission is authorized to establish an oversight program for the safety and security of rail fixed guideway systems in accordance with section 28 of the "Intermodal Surface Transportation Efficiency Act of 1991", 49 U.S.C. sec. 5330.

Source: L. 97: Entire article added, p. 931, § 1, effective August 6.

40-18-103. Commission to promulgate rules. (1) The commission shall promulgate rules as are necessary to:

(a) Require, review, approve, and monitor the creation and implementation of a system safety program plan for each rail fixed guideway system operating in Colorado;

(b) Investigate hazardous conditions and accidents on rail fixed guideway systems;

(c) Require corrective action by a transit agency to correct or eliminate hazardous conditions;

(d) Require that system safety program standards comply with the requirements of 49 CFR 659, "Rail Fixed Guideway Systems; State Safety Oversight", at a minimum, and also adequately address the issue of personal security.

(2) The commission shall promulgate rules to establish a system safety oversight program for rail fixed guideway systems operating within the state that, at a minimum, meets the requirements of 49 CFR 659, "Rail Fixed Guideway Systems; State Safety Oversight".

Source: L. 97: Entire article added, p. 931, § 1, effective August 6. L. 2008: (1)(d) amended, p. 1807, § 32, effective July 1.

40-18-104. Confidential investigative reports. Investigative reports of the commission compiled under this article shall be confidential and shall not be discoverable nor used as evidence in any court or administrative action.

Source: L. 97: Entire article added, p. 931, § 1, effective August 6.

40-18-105. Calculation and assessment of fees. At each regular session, the general assembly shall determine the amounts to be expended by the commission for its administrative expenses under this article, including any additional FTE that may be necessary. The commission shall assess fees in amounts that, in the aggregate, equal the administrative expenses. Such fees shall be assessed against the operators of all rail fixed guideway systems operating within the state, and shall be apportioned on the basis of the rail miles of each system in proportion to the total rail miles of all systems. All fees collected under this section shall be remitted to the state treasurer, who shall credit the same to the public utilities commission fixed utility fund created pursuant to section 40-2-114.

Source: L. 97: Entire article added, p. 931, § 1, effective August 6.

ARTICLE 20**Organization and Government****PART 1****GENERAL**

- 40-20-101. Certificate of incorporation.
 40-20-102. Powers of corporation.
 40-20-103. Right-of-way for changed line - sale of right-of-way for public passenger rail service - definitions.
 40-20-104. May guarantee bonds and interest.
 40-20-105. Construction started within two years.
 40-20-106. Directors - election.
 40-20-107. Stockholders to fix interest and loans.

- 40-20-108. Purchase or lease of other lines - sale.
 40-20-109. Dining cars need no license.
 40-20-110. Title to equipment.
 40-20-111. Lease may stipulate sale.
 40-20-112. Execution of contract.
 40-20-113. Acknowledgments.
 40-20-114. Term of existence - renewal.

PART 2**ABANDONMENT OF RAILROAD RIGHTS-OF-WAY**

- 40-20-201 to
 40-20-206. (Repealed)

PART 1**GENERAL**

40-20-101. Certificate of incorporation. (1) Any number of persons, not less than five, may associate to form a company for the purpose of constructing and operating a railroad.

(2) The certificate of incorporation, in addition to the matter otherwise required, shall specify as follows:

- (a) The places from and to which it is intended to construct the proposed railway;
- (b) The time of the commencement and the period of the continuance of such proposed corporation;
- (c) The names and places of residence of the several persons forming the association for incorporation; and
- (d) In what officers or persons the government of the proposed corporation and the management of its affairs shall be vested.

Source: G.L. § 298. G.S. § 333. R.S. 08: § 5410. C.L. § 2815. CSA: C. 139, § 1. CRS 53: § 116-1-1. C.R.S. 1963: § 116-1-1. L. 69: p. 966, § 1.

Cross references: For the disposition of unclaimed freight, see article 13 of title 38; for lien on goods and baggage, see § 38-20-105; for the assessment of railroad property for the purpose of taxation, see article 4 of title 39; for provisions applicable to public utilities generally, see articles 1 to 9.5 of this title.

ANNOTATION

Articles of incorporation not indicating an attempt to create a railroad company. People ex rel. Bernard v. Cheeseman, 7 Colo. 376, 3 P. 716 (1884).

40-20-102. Powers of corporation. (1) Every such corporation, in addition to the powers conferred in articles 101 to 117 of title 7, C.R.S., has the power:

- (a) To lay out its road, not exceeding two hundred feet in width, and to construct the same; and for the purpose of cuttings and embankments to take as much more land as may be necessary for the proper construction and security of the railway; and to cut down any standing trees that may be in danger of falling or obstructing the railway, making proper compensation therefor;

- (b) To cross, intersect, or connect its railway with any other railway;
- (c) To connect at the state line with railroads of other states and territories;
- (d) To receive and convey persons and property on its railway;
- (e) To erect and maintain all buildings and stations, fixtures, and machinery necessary and convenient for the accommodation, and use of passengers, freights, and business interests or which may be necessary for the construction or operation of said railway;
- (f) To regulate the time and manner in which passengers and property shall be transported and the compensation to be paid therefor;
- (g) From time to time, to borrow such sums of money as may be necessary for completing, finishing, improving, or operating any such railway, and to issue and dispose of its bonds for any amount so borrowed, and to mortgage its corporate property and franchise to secure the payment of any debt contracted by such corporation for such purposes, in such manner as the shareholders representing a majority of the stock of any such corporation may direct;
- (h) Notwithstanding any provision of law to the contrary, to invest in any of the following if such investment is consistent with sound investment policy:
 - (I) Any public-private initiative with the department of transportation, as defined in section 43-1-1201 (3), C.R.S.;
 - (II) Bonds issued for turnpikes in accordance with part 2 of article 3 of title 43, C.R.S.;
 - (III) Repealed.
 - (IV) Any other public-private initiative program for transportation system projects in Colorado authorized by law.

Source: G.L. § 301. G.S. § 336. R.S. 08: § 5411. C.L. § 2816. CSA: C. 139, § 2. CRS 53: § 116-1-2. C.R.S. 1963: § 116-1-2. L. 93: IP(1) amended, p. 866, § 45, effective July 1, 1994. L. 98: (1)(h) added, p. 447, § 9, effective August 5. L. 2005: (1)(h)(III) repealed, p. 290, § 42, effective August 8.

Cross references: For the legislative declaration contained in the 1998 act enacting subsection (1)(h), see section 1 of chapter 154, Session Laws of Colorado 1998.

ANNOTATION

The power is granted under this section to mortgage the corporate property as an entirety. *Booth v. Central Sav. Bank*, 58 Colo. 519, 146 P. 240 (1915).

Specific properties which may be mortgaged are not enumerated. Under this section the specific properties of a railroad company which may be mortgaged are not enumerated but the power is given "to mortgage its corporate property and franchise to secure the payment of any debt contracted by such corporation for the purposes" enumerated, and "in such manner as the shareholders representing a majority of the stock of any such corporation may direct." *Booth v. Central Sav. Bank*, 58 Colo. 519, 146 P. 240 (1915).

Section does not give right to operate trains without regard to the public interest. This section grants the right to regulate the time and manner in which passengers and property shall be transported over the lines of a railroad system, but this does not confer upon the company the unlimited right to operate its trains as it sees fit, without regard to the interest of the public. *Colo. & S. Ry. v. State R. R. Comm'n*, 54 Colo. 64, 129 P. 506 (1912).

When 200-foot limitation not applicable to condemnation by railroad. The general assembly did not intend the 200-foot width limitation of subsection (1)(a) to apply to the condemnation of private property under § 38-2-101 for the construction of a railroad's physical facilities (other than those required for the laying out of its road) which have a sufficiently direct functional relationship to the operations of the railroad to satisfy the public use requirement of § 15 of art. II, Colo. Const. *Buck v. District Court*, 199 Colo. 344, 608 P.2d 350 (1980).

A mortgage duly recorded creates a valid lien. A mortgage of railroad property in conformity with the statute governing mortgages of real estate, and duly recorded, creates a valid lien, though the statutes regulating chattel mortgages and the creation of liens upon chattel property are disregarded. *Booth v. Central Sav. Bank*, 58 Colo. 519, 146 P. 240 (1915).

Power to mortgage is a special grant and not general corporate power. The power given a railroad company to mortgage its property has always been, by virtue of a special grant as distinguished from the power invested in corporations generally. *Booth v. Central Sav. Bank*, 58 Colo. 519, 146 P. 240 (1915).

Railroad has right to locate its own stations. No statute requires that connected roads shall adopt joint stations, or that one railroad company shall stop at or make use of the station of another. Each company in the state has the legal right to locate its own stations, and, so far as statutory regulations are concerned, is not

required to use any other. *Atchison, T. & S. F. R. R. v. Denver & N. O. R. R.*, 110 U.S. 667, 4 S. Ct. 185, 28 L. Ed. 291 (1884).

Rolling stock may be included in the mortgage. *Booth v. Central Sav. Bank*, 58 Colo. 519, 146 P. 240 (1915).

40-20-103. Right-of-way for changed line - sale of right-of-way for public passenger rail service - definitions. (1) Any railroad company having located its line of road, whether the same is completed or not, may make a new location of its line and may acquire the right-of-way for such new line in the same manner as is now provided for acquiring the right-of-way by the statutes of Colorado; but in acquiring said new right-of-way, the previous right-of-way shall revert to the owner of the land through which said previous right-of-way was granted upon the payment or tendering payment to the railroad company of the amount assessed by the board of appraisers and paid by said railroad company for said previous right-of-way.

(2) (a) Any railroad company may sell its right-of-way for the operation of a public passenger rail service. In such case, the right-of-way shall continue to be used as a public highway only for operation of public passenger rail service for purposes of section 4 of article XV of the state constitution if ownership of the right-of-way is transferred to a public passenger rail service provider, regardless of:

(I) Whether or not an order of abandonment has been issued for the right-of-way by the federal surface transportation board, any successor federal agency, or any court of competent jurisdiction;

(II) The technology used to operate the public passenger rail service; or

(III) Whether ownership of the railroad is public or private.

(b) No rail service provider operating public passenger rail service as authorized by paragraph (a) of this subsection (2) shall be required to offer its right-of-way for use by any other rail service provider by operation of Colorado law after an order of abandonment has been issued.

(3) Nothing in this section shall be construed to affect any vested right of any party.

(4) For purposes of this section, "public passenger rail service" means any passenger service that runs on rails or electromagnetic guideways, including but not limited to:

(a) Commuter or other short-haul railroad passenger service in a metropolitan or suburban area;

(b) High-speed ground transportation systems that connect metropolitan areas; or

(c) Rapid transit operations in an urban area that are not connected to the general railroad system of transportation.

Source: L. 1874: p. 224, § 1. G.L. § 2234. G.S. § 2795. R.S. 08: § 5519. C.L. § 2902. CSA: C. 139, § 88. CRS 53: § 116-1-3. C.R.S. 1963: § 116-1-3. L. 2010: Entire section amended, (HB 10-1276), ch. 201, p. 875, § 1, effective August 11.

Cross references: For procedure in eminent domain, see articles 1 to 7 of title 38.

ANNOTATION

Law reviews. For note, "The Real Property Interest Created In a Railroad Upon Acquisition of Its 'Right-of-Way'", see 27 Rocky Mt. L. Rev. 73 (1954).

Where nothing is paid for right-of-way part of § 38-1-101 requiring payment does not apply. Where a railroad company, having a right-of-way over public lands, changed its line and abandoned its former right-of-way for a period of 13 years, upon the extinction of title by

abandonment it was merged in the title held by those holding under certain patentees, and the land came within the provision of this section. Nothing having been paid for the right-of-way, that portion of § 38-1-101 requiring payment does not apply. *Denver & R. G. R. R. v. Mills*, 222 F. 481 (8th Cir. 1915).

Question of abandonment of right-of-way is one of intent. The question as to whether or not a railroad company has abandoned a right-

of-way acquired by it is to a great extent one of intent; but such intention can be established by the acts of the company clearly indicating its purpose not to use such right-of-way and by long nonuser thereof. *Denver & R. G. R. R. v. Mills*, 222 F. 481 (8th Cir. 1915).

Where owner does not object to changes he is estopped from maintaining trespass or ejectment. Where a company acquires a right-of-way over land for a railroad and its successor changes the use to toll road purposes, of which the landowner had knowledge, and the latter stands by without objection while expenditures

are made in the construction of the toll road, he is estopped from maintaining either trespass or ejectment for the entry for such changed use. *MacKenzie v. Corley*, 94 Colo. 263, 29 P.2d 1044 (1934).

Estoppel operates against a grantee acquiring title with notice of the change. *MacKenzie v. Corley*, 94 Colo. 263, 29 P.2d 1044 (1934).

In such circumstances the remedy of the original owner is an action for damages, but such remedy does not pass with the land to his grantee. *MacKenzie v. Corley*, 94 Colo. 263, 29 P.2d 1044 (1934).

40-20-104. May guarantee bonds and interest. It is lawful for any railroad company organized, existing, or doing business in the state of Colorado under the laws of the state of Colorado, upon good consideration, to guarantee the payment of any mortgage, mortgage bonds, or interest coupons of any other railroad connecting with said first named railroad. It is also lawful for any such railroad, upon good consideration, to guarantee to said road the payment of interest upon its capital stock.

Source: L. 1887: p. 369, § 1. R.S. 08: § 5412. C.L. § 2817. CSA: C. 139, § 3. CRS 53: § 116-1-4. C.R.S. 1963: § 116-1-4.

40-20-105. Construction started within two years. If any railway corporation, within two years after its articles of association have been filed and recorded, does not begin the construction of its road and expend thereon twenty percent of the amount of its capital within five years after the date of its organization, its corporate existence and power shall cease; but any such railway corporation at any time may reduce its capital stock in the manner and form provided by the laws of this state, and if twenty percent of the amount of its capital, as so reduced, has at any time been expended in good faith in the construction of its road, then its corporate existence and power shall not cease or be deemed to have ceased.

Source: G.L. § 303. G.S. § 337. L. 1889: p. 95 § 1. R.S. 08: § 5413. C.L. § 2818. CSA: C. 139, § 4. CRS 53: § 116-1-5. C.R.S. 1963: § 116-1-5.

ANNOTATION

Section may be used as defense in condemnation proceeding. Where a railroad company, seeking to acquire by condemnation the property of another, has by reasons of nonfulfillment of the requirements of this section lost its cor-

porate rights or powers, that fact may be set up by way of defense in the condemnation proceedings. *People ex rel. Union Pac. Ry. v. Colo. E. Ry.*, 8 Colo. App. 301, 46 P. 219 (1896).

40-20-106. Directors - election. At any meeting of the stockholders of any railroad corporation formed under the laws of this state for the election of directors, managers, or trustees, the stockholders may classify the directors in three equal classes, as near as may be, one of which classes shall hold office for one year, one for two years, and one for three years until its successors are respectively elected; and at all subsequent elections, in the event such classification is made, directors shall be elected for three years to fill the places made vacant by the class whose term of office expires at that time.

Source: G.L. § 319. G.S. § 362. R.S. 08: § 5414. C.L. § 2819. CSA: C. 139, § 5. CRS 53: § 116-1-6. C.R.S. 1963: § 116-1-6.

Cross references: For provisions regarding directors and their election, see part 1 of article 108 of title 7.

40-20-107. Stockholders to fix interest and loans. At all general meetings of the stockholders, those holding a majority in the value of the stock of any such corporation may fix the rates of interest which shall be paid by the corporation for loans for the construction of such railway and its appendages and the amount of such loans.

Source: G.L. § 300. G.S. § 335. R.S. 08: § 5415. C.L. § 2820. CSA: C. 139, § 6. CRS 53: § 116-1-7. C.R.S. 1963: § 116-1-7.

40-20-108. Purchase or lease of other lines - sale. Any railroad company owning or operating, or formed to own or operate, a line of railroad in this state may lease or purchase other lines of railroad within or without this state which shall connect with the road operated or to be operated by such company, directly or by means of any other line which such company has the right by contract or otherwise, when constructed, to use or operate, and may acquire and may hold the obligations and stock of other companies owning or operating any such line of railroad which such company is so authorized to lease or purchase or with which, under the laws of the state of Colorado, it may be authorized to consolidate, and any railroad corporation may lease or sell its line of railroad to any other company authorized to lease or purchase the same. No line of railroad shall be so leased, purchased, or sold until a meeting of the stockholders of the companies party to such agreement of lease or sale has been called for that purpose in such manner as provided for the annual stockholders' meeting, and the holders of at least two-thirds of the stock of such companies consent thereto or, in the case of a foreign corporation, unless the consent thereto of the stockholders has been obtained to the extent required and in the manner provided by the laws of the place of incorporation. Nothing in this section shall be deemed to authorize the lease, purchase, or sale of competing or parallel lines or to exclude the jurisdiction of this state over the control or regulation of all railroads or parts of the same as are situated within the boundaries of this state.

Source: L. 1899: p. 313, § 1. R.S. 08: § 5418. C.L. § 2821. L. 27: p. 580, § 1. CSA: C. 139, § 7. CRS 53: § 116-1-8. C.R.S. 1963: § 116-1-8.

Cross references: For the call of stockholders' meeting, see §§ 7-107-102 and 7-107-103.

40-20-109. Dining cars need no license. No person or corporation shall be required to obtain or pay any town, city, county, or state license or tax within the state of Colorado by reason of furnishing or serving to passengers upon any railroad train meals, luncheons, or refreshments in any hotel car, dining car, or buffet car operated by such person or corporation.

Source: L. 1891: p. 260, § 1. R.S. 08: § 5521. C.L. § 2904. CSA: C. 139, § 90. CRS 53: § 116-1-9. C.R.S. 1963: § 116-1-9.

ANNOTATION

This section exempts a railroad from the state sales tax with respect to sales of food and beverages sold by the railroad to passengers on

its line. Dept. of Rev. v. Durango & Silverton Narrow Gauge R.R. Co., 989 P.2d 208 (Colo. App. 1999).

40-20-110. Title to equipment. In any written contract for the sale of railroad equipment or rolling stock, deliverable immediately or subsequently, at stipulated periods, by the terms of which the purchase money, in whole or in part, is to be paid in the future, it may be agreed that the title to the property so sold or contracted to be sold shall not pass to or vest in the vendee until the purchase money has been fully paid or that the vendor shall retain a lien thereon for the unpaid purchase money, notwithstanding delivery thereof to and

possession by the vendee for a period not to exceed twenty-five years in any one contract, which terms shall be expressed in said contract; but the situs or location of all such property shall, for the purposes of taxation and revenue, be deemed to be within the state of Colorado.

Source: L. 1885: p. 302, § 1. L. 05: p. 305, § 1. R.S. 08: § 5523. C.L. § 2906. CSA: C. 139, § 92. CRS 53: § 116-1-10. C.R.S. 1963: § 116-1-10.

ANNOTATION

Purpose of section. This section provides for contracts whereby the vendor of railroad equipment may preserve title in himself until payment for such equipment is made and thus prevent the same from being covered by superior mortgage liens. Booth v. Central Sav. Bank, 58 Colo. 519, 146 P. 240 (1915).

Section a part of agreement or contract. By a well-known rule of construction this and the

following sections are written into and become a part of an agreement or contract. Central Locomotive & Car Works v. Smith, 27 Colo. App. 449, 150 P. 241 (1915).

Receivers required to pay balance due under contract or return locomotives. Central Locomotive & Car Works v. Smith, 27 Colo. App. 449, 150 P. 241 (1915).

40-20-111. Lease may stipulate sale. In any written contract for the leasing or renting of railroad equipment or rolling stock, it is lawful to stipulate for a conditional sale thereof at the termination of such lease and to stipulate that the rentals received, as paid or when paid in full, may be applied and treated as purchase money and that the title to such property shall not vest in such lessee or vendee until the purchase money has been paid in full, notwithstanding delivery to and possession by such lessee or vendee.

Source: L. 1885: p. 303, § 2. R.S. 08: § 5524. C.L. § 2907. CSA: C. 139, § 93. CRS 53: § 116-1-11. C.R.S. 1963: § 116-1-11.

ANNOTATION

This section regulates the leasing of railroad equipment, and also provides for conditional sale thereof and prevents title thereto from passing to lessee or vendee until the purchase money shall have been paid in full. Booth v.

Central Sav. Bank, 58 Colo. 519, 146 P. 240 (1915).

Applied in Central Locomotive & Car Works v. Smith, 27 Colo. App. 449, 150 P. 241 (1915).

40-20-112. Execution of contract. (1) Every such contract, specified in sections 40-20-110 and 40-20-111, shall be good, valid, and effectual, both in law and equity, against all purchasers and creditors, provided:

(a) The contract is acknowledged by the vendee or lessee before some officer authorized by law to take acknowledgments of deeds;

(b) Such instrument is recorded or a copy thereof filed in the office of the secretary of state and in the office of the county clerk and recorder of each of the counties in which the railroad may be operated in this state;

(c) Each locomotive engine or car so sold or contracted to be sold or leased has the name of the vendor or lessor or the assignee of such vendor or lessor plainly placed or marked on each side thereof or otherwise marked so as to indicate the ownership thereof or that the same is covered by such special contract.

Source: L. 1885: p. 303, § 3. R.S. 08: § 5525. C.L. § 2908. CSA: C. 139, § 94. CRS 53: § 116-1-12. C.R.S. 1963: § 116-1-12.

ANNOTATION

This section provides for execution of contracts in reference to matters covered in the two preceding sections. It requires, inter alia, that such contracts be acknowledged by the vendee or lessees before some officer authorized by law to take acknowledgments of deeds, and to be recorded in the office of the secretary of

state and in the office of the recorder of each of the counties in which the railroad may be operated in this state. *Booth v. Central Sav. Bank*, 58 Colo. 519, 146 P. 240 (1915).

Applied in *Central Locomotive & Car Works v. Smith*, 27 Colo. App. 449, 150 P. 241 (1915).

40-20-113. Acknowledgments. The acknowledgments of such contracts may be made in the form required as to conveyances of real estate.

Source: L. 1885: p. 303, § 5. **R.S. 08:** § 5527. **C.L.** § 2910. **CSA:** C. 139, § 96. **CRS 53:** § 116-1-13. **C.R.S. 1963:** § 116-1-13.

Cross references: For form of real estate conveyance acknowledgments, see § 38-35-101.

ANNOTATION

This section requires that contracts under the preceding sections “may be acknowledged in the form required as to conveyances of real

estate”. *Booth v. Central Sav. Bank*, 58 Colo. 519, 146 P. 240 (1915).

40-20-114. Term of existence - renewal. No such corporation shall be formed to continue more than fifty years in the first instance, but such corporation may be renewed from time to time, in such manner as may be provided by law, for periods not longer than fifty years.

Source: G.L. § 299. G.S. § 334. **R.S. 08:** § 5419. **C.L.** § 2822. **CSA:** C. 139, § 8. **CRS 53:** § 116-1-14. **C.R.S. 1963:** § 116-1-14.

ANNOTATION

Under this section railroad companies may continue to exercise their franchises for the period of 50 years, with a provision for their

renewal. *Virginia Canon Toll-Road Co. v. People ex rel. Vivian*, 22 Colo. 429, 45 P. 398 (1896).

PART 2

ABANDONMENT OF RAILROAD RIGHTS-OF-WAY

40-20-201 to 40-20-206. (Repealed)

Editor’s note: (1) This part 2 was added in 1996 and was not amended prior to its repeal in 1997. For the text of this part 2 prior to 1997, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

(2) Section 40-20-206 provided for the repeal of this part 2, effective July 1, 1997. (See L. 96, p. 839.)

ARTICLE 21

General Offices

40-21-101. Domestic railroads - head-quarters.

40-21-102.
40-21-103.

Officials at general offices.
Violation of article - penalty.

40-21-101. Domestic railroads - headquarters. Every railroad company chartered by this state shall keep and maintain permanently its general offices within the state of Colorado at the place named in its charter for the location of its general offices; and, if no certain place is named in its charter where its general offices shall be located and maintained, said railroad company shall keep and maintain its general offices at the place within this state where it contracts or agrees for a valuable consideration to locate its general offices; and, if said railroad company has not contracted or agreed for a valuable consideration to maintain its general offices at any certain place within this state, such general offices shall be located and maintained at such place on its line in this state as said railroad company may designate.

Source: L. 09: p. 471, § 1. C.L. § 2824. CSA: C. 139, § 10. CRS 53: § 116-2-1. C.R.S. 1963: § 116-2-1. L. 2000: Entire section amended, p. 218, § 6, effective March 29.

40-21-102. Officials at general offices. It is the duty of said railroad company to keep and maintain at the place within this state where its said general offices are located the office of its president or vice-president, secretary, treasurer, local treasurer, auditor, general freight agent, traffic manager, general manager, general superintendent, general passenger and ticket agent, chief engineer, superintendent of motive power and machinery, master mechanic, master of transportation, fuel agent, and general claim agent; and each of its general offices, by whatsoever name known, shall be so kept and maintained at said place. This article shall apply to every person who performs the duties of any of said offices, by whatever title known, and the railroad company shall not be allowed to have any of the offices usually known as general offices at any other place than the place where it is required by this article to keep its general offices. Where the principal shops of any company are situated on its line in the state at a place other than the place where its general offices are located, the superintendent of motive power and machinery and the master mechanic, either or both, may have his office and residence at the place where such principal shops are located. The public utilities commission of the state of Colorado, where it is made to appear that any officer other than the general officers of any railroad company can more conveniently perform his duties by residing at some place on the line in Colorado other than the place where the general offices are situated, by order entered on its record may authorize any such officer so to reside and keep his office at such place.

Source: L. 09: p. 472, § 2. C.L. § 2825. CSA: C. 139, § 11. CRS 53: § 116-2-2. C.R.S. 1963: § 116-2-2.

40-21-103. Violation of article - penalty. Each railroad company chartered by this state or owning, operating, or controlling any line of railroad within this state which violates any of the provisions of this article shall forfeit to the state of Colorado the charter or right by which it operates its railroad in this state and be subject to a penalty of not less than five hundred dollars nor more than five thousand dollars for each and every day in which it violates any of the provisions of this article, to be recovered by suit in the name of the state of Colorado prosecuted by the district attorney of any judicial district in which any violation occurs to recover the penalty provided in this section for such violation. Any money recovered from any railroad company under the provisions of this article shall be paid into the state treasury and become a part of the available public school fund.

Source: L. 09: p. 473, § 3. C.L. § 2826. CSA: C. 139, § 12. CRS 53: § 116-2-3. C.R.S. 1963: § 116-2-3. L. 2000: Entire section amended, p. 218, § 7, effective March 29.

ARTICLE 22

Consolidation

40-22-101.	Consolidation of roads - re- strictions.	40-22-104.	Property of each transferred.
40-22-102.	Conditions necessary for con- solidation.	40-22-105.	Offices - one in this state.
40-22-103.	Result of consolidation.	40-22-106.	Consolidation of domestic and foreign corporation.
		40-22-107.	Taxation.

40-22-101. Consolidation of roads - restrictions. It is lawful for any railroad company or corporation, organized or existing under the laws of this state, and whose line or road is made or is in the process of construction to the boundary line of the state or to any point either in or out of the state, under authority of its laws, to merge and consolidate its capital stock, franchises, and property into and with the capital stock, franchises, and property of any other railroad company or corporation organized and existing under the laws of any adjoining state whenever the two or more railroads of the companies or corporations so to be consolidated form a continuous line of railroad with each other or by means of any intervening railroad; and roads running to the bank of a river which is not bridged shall be held to be continuous. Nothing in this article shall be taken to authorize the consolidation of any company or corporation of this state with that of any other state, unless the laws of such other state authorize such consolidation; but parallel or competing lines of railroad shall not be consolidated.

Source: L. 1883: p. 117, § 1. G.S. § 353. R.S. 08: § 5421. C.L. § 2827. CSA: C. 139, § 13. CRS 53: § 116-3-1. C.R.S. 1963: § 116-3-1. L. 2002: Entire section amended, p. 1006, § 3, effective August 7.

40-22-102. Conditions necessary for consolidation. (1) Said consolidation shall be made under the conditions, provisions, and restrictions and with the powers as follows:

(a) The directors of the several corporations proposing to consolidate may enter into a joint agreement, under the corporate seal of each company, for the consolidation of said companies and railroads, and prescribing the terms and conditions thereof, the mode of carrying the same into effect, the name of the new corporation, the number and names of the directors and other officers thereof, who shall be the first directors and officers and their places of residence, the number of shares of the capital stock, the principal place of business of the new company in each state or territory traversed by its line of railway, and such other provisions as may be required by law to be inserted in an original certificate of incorporation, the manner of converting the capital stock of each of said companies into that of the new corporation, and how and when directors and officers shall be chosen, with such other details as they shall deem necessary to perfect such new organization and the consolidation of said companies and railroads.

(b) Said agreement shall be submitted to the stockholders of each of the companies or corporations, at a meeting thereof, called separately, for the purpose of taking the same into consideration; due notice of the time and place of holding such meeting, and the object thereof, shall be given by written or printed notices, addressed to each of the persons in whose names the capital stock of said companies stands on the books thereof, and delivered to such persons respectively or sent to them by mail when their post-office addresses are known to the company and also by a general notice published in some newspaper in the city, town, or county where such company has its principal office or place of business. At the said meeting of stockholders, the agreement of the said directors shall be considered and a vote by ballot taken for the adoption or rejection of the same, each share entitling the holder thereof to one vote; and said ballots shall be cast in person or by proxy, and, if a majority of all the votes of all the stockholders are for the adoption of said agreement, that fact shall be certified thereon by the secretaries of the respective companies under the seals thereof. The agreement so adopted, or a certified copy thereof, shall be filed in the office of the secretary of state and shall be deemed the agreement and act of consolidation of the said

companies. A copy of said agreement and act of consolidation, duly certified by the secretary of state under the seal thereof, shall be evidence of the existence of said new corporation; but, if the mode of ratifying said agreement of consolidation in such other state or territory varies from the mode prescribed in this section, such agreement may be ratified by the railroad company or corporation of such other state or territory in the mode prescribed by the laws thereof.

Source: L. 1883: p. 118, § 2. G.S. § 354. R.S. 08: § 5422. C.L. § 2828. CSA: C. 139, § 14. CRS 53: § 116-3-2. C.R.S. 1963: § 116-3-2.

Cross references: For publication of legal notices, see part 1 of article 70 of title 24.

40-22-103. Result of consolidation. Upon making and perfecting the agreement and act of consolidation and filing the same or a copy with the secretary of state, the several corporations which are parties thereto shall be deemed to be one corporation by the name provided in said agreement, possessing within this state all the rights, privileges, and franchises, and subject to all the restrictions, disabilities, and duties of each of such corporations so consolidated.

Source: L. 1883: p. 119, § 3. G.S. § 355. R.S. 08: § 5423. C.L. § 2829. CSA: C. 139, § 15. CRS 53: § 116-3-3. C.R.S. 1963: § 116-3-3.

Cross references: For merger and consolidation of domestic corporations, see article 111 of title 7.

40-22-104. Property of each transferred. (1) Upon the consummation of said act of consolidation, all the rights, privileges, and franchises of each of said corporations, parties to the same, and all the property, real, personal, and mixed, and all debts due on whatever account, as well as stock subscriptions and other things in action, belonging to each of such corporations shall be deemed to be transferred to and vested in such new corporation without further act or deed. All property, all rights-of-way, and every other interest shall be as effectually the property of the new corporation as they were of the former corporations.

(2) The title to real estate, either by deed or otherwise, under the laws of this state or of the United States, vested in any of such corporations, shall not be deemed to revert or be in any way impaired by reason of this article, nor shall the lien, operation, or effect of any trust deed or mortgage executed by any of the corporations so consolidating be in any way divested, impaired, or affected. The new corporation shall have the right to execute any future trust deed or mortgage upon its property, as shall be provided in the agreement of consolidation, not inconsistent with the laws of this state, and all debts, liabilities, and duties of either of said companies shall attach to said new corporation, and be enforced against it, to the same extent as if said debts, liabilities, and duties had been incurred or contracted by it.

Source: L. 1883: p. 120, § 4. G.S. § 356. R.S. 08: § 5424. C.L. § 2830. CSA: C. 139, § 16. CRS 53: § 116-3-4. C.R.S. 1963: § 116-3-4.

40-22-105. Offices - one in this state. Such new company, as soon as convenient after such consolidation, shall establish such offices as may be desired, one of which shall be at some point in this state on the line of its road, and may change the same to any other point in this state at pleasure, giving public notice thereof in some newspaper published in this state.

Source: L. 1883: p. 120, § 5. G.S. § 357. R.S. 08: § 5425. C.L. § 2831. CSA: C. 139, § 17. CRS 53: § 116-3-5. C.R.S. 1963: § 116-3-5.

Cross references: For the duty of railroad companies to maintain general offices in this state, see § 40-21-101.

40-22-106. Consolidation of domestic and foreign corporation. If any railroad company organized under the laws of this state consolidates with any railroad company organized under the laws of any other state or of the United States, the same shall not become a foreign corporation, and the courts of this state shall retain jurisdiction in all cases which may arise, as if said consolidation had not taken place.

Source: L. 1883: p. 121, § 6. G.S. § 358. R.S. 08: § 5426. C.L. § 2832. CSA: C. 139, § 18. CRS 53: § 116-3-6. C.R.S. 1963: § 116-3-6.

40-22-107. Taxation. The portion of the road of such consolidated company in this state and all its real estate and other property shall be subject to like taxation and assessed in the same manner and with like effect as property of other railroad companies within this state.

Source: L. 1883: p. 121, § 7. G.S. § 359. R.S. 08: § 5427. C.L. § 2833. CSA: C. 139, § 19. CRS 53: § 116-3-7. C.R.S. 1963: § 116-3-7.

Cross references: For the taxation of railroads, see article 4 of title 39.

ARTICLE 23

Reorganization

40-23-101.	Right to reorganize.	40-23-102.	Power of company so organized.
------------	----------------------	------------	--------------------------------

40-23-101. Right to reorganize. Whenever the railroads, property, and franchises of any railroad company, organized and existing under the laws of this state, are sold and conveyed under or by virtue of any power contained in any trust deed or mortgage or pursuant to the judgment or decree of any court of competent jurisdiction, it is lawful to organize a railroad company under the laws of this state for the purpose of purchasing, maintaining, operating, extending, or completing the railroads, property, and franchises so sold and conveyed.

Source: L. 1885: p. 150, § 1. R.S. 08: § 5428. C.L. § 2834. CSA: C. 139, § 20. CRS 53: § 116-4-1. C.R.S. 1963: § 116-4-1. L. 2008: Entire section amended, p. 1807, § 33, effective July 1.

40-23-102. Power of company so organized. The railroad company so organized has the power to acquire and purchase the property and franchises so sold and conveyed, and to take, hold, exercise, and enjoy all the estate, franchises, rights, powers, privileges, and claims or demands at law or in equity of the corporation whose property and franchises have been so sold and conveyed; and, in payment of the price therefor, such railroad company may issue its capital stock and bonds and may mortgage its property and franchises with such classification of capital stock and bonds as may be agreed upon by and between such railroad company and the parties who may be beneficially interested or who may have the ownership and control of such property and franchises.

Source: L. 1885: p. 150, § 2. R.S. 08: § 5429. C.L. § 2835. CSA: C. 139, § 21. CRS 53: § 116-4-2. C.R.S. 1963: § 116-4-2.

ARTICLE 24

Electric and Street Railroads

40-24-101.	Street railway - consent necessary.	40-24-107.	Forfeiture of right-of-way - cause.
40-24-102.	Grant right-of-way - condemnation.	40-24-108.	Railroad subject to assignment.
40-24-103.	Petition for right-of-way.	40-24-109.	Protection of employees from weather. (Repealed)
40-24-104.	Railroad to maintain and keep joint road and bridges in good repair.	40-24-110.	Motormen to have unobstructed view - trailing car excepted. (Repealed)
40-24-105.	New bridges - construction and maintenance.	40-24-111.	Each day an offense - penalty. (Repealed)
40-24-106.	Width of joint bridges.		

40-24-101. Street railway - consent necessary. Nothing in articles 20 to 33 of this title shall be construed to allow the construction of any street or other railroad or other structure or substructure for any purpose on, below, or elevated above the surface of the ground of any street or alley within the limits of any such city or town by any corporation or person without the consent of the local authorities of such city or town; but no such consent, however enacted or expressed, on any consideration whatever shall operate to relieve or protect any person or corporation constructing any such street or other railroad or structure or substructure against any claim for damages to private property which otherwise, without such consent, might be lawfully maintained against such person or corporation.

Source: G.L. § 219. G.S. § 266. L. 1885: p. 152, § 1. R.S. 08: § 5420. C.L. § 2823. CSA: C. 139, § 9. CRS 53: § 116-5-1. C.R.S. 1963: § 116-5-1. L. 77: Entire section amended, p. 1240, § 2, effective July 1.

ANNOTATION

This section reenacts, in effect, § 11 of art. XV, Colo. Const., and further declares, substantially, that the consent upon the part of a city to the construction of a street railroad therein shall not operate to relieve or protect those constructing the road, etc., "against any claim for damages to private property, which otherwise, without such consent, might be lawfully maintained against" the persons constructing the road. *Harrison v. Denver City Tramway Co.*, 54 Colo. 593, 131 P. 409 (1913).

Insufficient complaint under this section. A complaint under this section states no cause of action where it contains no allegation that the railway track is above or below the surface of the street, or was in anywise improperly or negligently constructed, or that the road, as a structure, in any way hampers ingress or egress. Where the inconvenience alleged arises from "the frequency with which cars are operated upon said tracks", and in no sense from the structure itself, the defendant is not liable for inconvenience of either character, because they are merely incident to the use of the highway for public travel. *Denver & S. F. Ry. v. Hannegan*, 43 Colo. 122, 95 P. 343, 127 Am. St. R. 100, 16 L.R.A. (n.s.) 874 (1908); *Harrison v. Denver City Tramway Co.*, 54 Colo. 593, 131 P. 409 (1913).

Railroad's liability for damage or taking of private property is the same as that of city. This section makes it certain, as between municipalities and those constructing street railroads therein, that the latter shall make compensation for private property taken or damaged in the construction of such public works. In other words, as to the liability for compensation for private property taken or damaged, those constructing the road stand in the place of the city. *Harrison v. Denver City Tramway Co.*, 54 Colo. 593, 131 P. 409 (1913).

Under this section plaintiff's rights depend solely upon whether the property has been taken or damaged. *Harrison v. Denver City Tramway Co.*, 54 Colo. 593, 131 P. 409 (1913).

It must appear that plaintiff had some right in, use of, or interest pertaining to the property which has been wholly or partially destroyed before she can maintain a cause of action for damages to her property. *Harrison v. Denver City Tramway Co.*, 54 Colo. 593, 131 P. 409 (1913).

The right disturbed may be either public or private, but it must be a right which is enjoyed in connection with one's property, and which gave to it an additional value, and without which, or as affected by the disturbance, the property itself is damaged. The disturbance

of the right of easement may be at a distance from the property injured, but the interference must be with some right held with regard to that property. *Gilbert v. Greeley, S. L. & Pac. Ry.*, 13 Colo. 501, 22 P. 814 (1889); *Harrison v. Denver City Tramway Co.*, 54 Colo. 593, 131 P. 409 (1913).

The injury sustained must be damages to one's property, not incidental injuries arising from a careful exercise of legal rights by defendant in a manner that does not invade the legal rights of plaintiff. *City of Denver v. Bayer*, 7 Colo. 113, 2 P. 6 (1883); *Denver Circle R. R. v. Nestor*, 10 Colo. 403, 15 P. 714 (1887); *Harrison v. Denver City Tramway Co.*, 54 Colo. 593, 131 P. 409 (1913).

The use of the streets in municipalities for street railway is one of the ordinary and usual purposes for which such streets and highways may be used. *Harrison v. Denver City Tramway Co.*, 54 Colo. 593, 131 P. 409 (1913).

The use of the streets in municipalities for street railway does not entitle the adjoining owner to compensation. Such a street railway, so laid and operated as not to materially impair access to, or the enjoyment of, the adjacent property may lawfully be placed in the public highways of the city, if expressly sanctioned by

proper authority. Such a use does not impose any additional burden entitling the owner of adjoining land to compensation; nor can it be justly regarded, at the present day, as any substantial impairment of the public easement or of the private rights of proprietors of land abutting on the street. *Harrison v. Denver City Tramway Co.*, 54 Colo. 593, 131 P. 409 (1913).

Noises and vibrations of cars give no cause of action. The annoyances, discomfort, and injury, suffered by the abutter from the ringing of bells, and loud and discordant noises produced by the cars in passing over the tracks and around curves, are, excepting as to degree, suffered by the public generally so far as such noises and vibrations are heard and felt, and give no action. *Harrison v. Denver City Tramway Co.*, 54 Colo. 593, 131 P. 409 (1913).

The abutter is entitled to receive at, or remove from his premises, persons or goods, and to have vehicles stand in front thereof upon the street, for the time reasonably necessary for this purpose, even though this may temporarily interfere with the passage of others; and if this right is interfered with he may have redress therefor in a proper action. *Harrison v. Denver City Tramway Co.*, 54 Colo. 593, 131 P. 409 (1913).

40-24-102. Grant right-of-way - condemnation. The boards of county commissioners in their respective counties in the state of Colorado, with the written consent of a majority of the holders of property (measured by the front foot) abutting on each side of such county roads, have the power to grant to any person, company, corporation, or association outside of cities and towns the right-of-way and franchise for the construction, operation, or maintenance of any electric railroad over, along, and across any county road in their respective counties, upon the terms and conditions provided in section 40-24-103; and, when necessary to enter upon and use private property in the construction and operation of such roads, such person, company, corporation, or association has the same power of operation and condemnation that the railroad companies have.

Source: L. 07: p. 407, § 1. R.S. 08: § 5432. C.L. § 2836. CSA: C. 139, § 22. CRS 53: § 116-5-2. C.R.S. 1963: § 116-5-2.

Cross references: For condemnation of rights-of-way, see article 2 of title 38.

40-24-103. Petition for right-of-way. Any person, company, corporation, or association desiring in good faith to construct, maintain, and operate an electric railroad over, along, or across any county road within any county in this state may petition the board of county commissioners of such county for a franchise and right-of-way for the construction, maintenance, and operation of an electric railroad. The board of county commissioners, in accordance with the conditions provided in this section, may grant said right-of-way and franchise for a period not exceeding twenty years. Before any such person, company, association, or corporation commences the construction of any such electric railroad, there shall be filed with and approved by the board of county commissioners of any such county specifications and surveys with maps, showing all grades and curves of such proposed line of road, together with the exact location and description of all tracks, culverts, bridges, and poles, and the difference, if any, in all grades between such county road and the said proposed line of railroad. Before such specifications, surveys, or maps shall be so approved, at least ten days' public notice of the filing thereof shall be given by such board of county

commissioners by publication in some newspaper of general circulation in such county and by the posting of a copy thereof in the office of the county clerk and recorder of such county.

Source: L. 07: p. 407, § 2. R.S. 08: § 5433. C.L. § 2837. CSA: C. 139, § 23. CRS 53: § 116-5-3. C.R.S. 1963: § 116-5-3.

40-24-104. Railroad to maintain and keep joint road and bridges in good repair. Any person, company, corporation, or association to whom any such right-of-way and franchise is granted shall construct and maintain its railroad on either side of the county road, and, at its own expense and in good substantial manner, shall strengthen and repair all bridges and culverts on said county road which are used or occupied jointly by said electric railroad and the traveling public, and, thereafter during the existence of said franchise, shall contribute and pay not less than one-half of the necessary expense of keeping said bridges and culverts in good repair, and shall pay all expense of keeping public and private crossings planked and in good repair, and, at its own expense, shall widen to not less than twenty-four feet all bridges, culverts, cuts, and embankments on said public highway which are used or occupied jointly by said electric railroad and the traveling public.

Source: L. 07: p. 408, § 3. R.S. 08: § 5434. C.L. § 2838. CSA: C. 139, § 24. CRS 53: § 116-5-4. C.R.S. 1963: § 116-5-4.

40-24-105. New bridges - construction and maintenance. Whenever it becomes necessary to build or construct any new bridges or culverts on any county road over or along which any person, company, corporation, or association is operating and maintaining an electric railroad, said person, company, corporation, or association shall pay to the party constructing or erecting the same one-half of the expense for the erection and construction of the bridges or culverts which are used jointly by the public and said railroad and shall thereafter pay one-half of the necessary expense of keeping said bridges or culverts used jointly by the public and said railroad in good repair; and the county in which said county road is situated shall contribute and pay out of the county road fund the other one-half of the expense for the construction and maintenance thereafter of any such culverts or bridges. Said bridges or culverts shall be constructed under the joint supervision of the owner or operator of said electric railroad and the board of county commissioners of such county.

Source: L. 07: p. 409, § 4. R.S. 08: § 5435. C.L. § 2839. CSA: C. 139, § 25. CRS 53: § 116-5-5. C.R.S. 1963: § 116-5-5.

40-24-106. Width of joint bridges. Any bridge or culvert constructed upon any county road or public highway which is to be used jointly by any electric railroad and the traveling public shall not be less than twenty-four feet in width.

Source: L. 07: p. 409, § 5. R.S. 08: § 5436. C.L. § 2840. CSA: C. 139, § 26. CRS 53: § 116-5-6. C.R.S. 1963: § 116-5-6.

40-24-107. Forfeiture of right-of-way - cause. Whenever any person, company, corporation, or association obtains a franchise and right-of-way to operate an electric railroad over or along any county road in any county in this state and fails, refuses, or neglects, for a period of six months after the granting of any such franchise, to commence the work of constructing such electric railroad and in good faith to continuously prosecute the construction thereof to a final completion or fails, refuses, or neglects to operate or maintain said railroad in good condition and in good faith, for a period of one year at any one time after the granting of said franchise or right-of-way, such person, company, corporation, or association or its assigns shall forfeit all its right, title, and interest in and to such franchise and right-of-way, and the same shall become null and void; and it shall be the duty of the board of county commissioners of the county granting such franchise and the district attorney of the judicial district in which the county is situated to immediately

institute the proper legal proceedings to cancel said franchise and all right, title, and interest of said person, company, corporation, or association or its assigns to use or occupy any portion of said county road.

Source: L. 07: p. 409, § 6. R.S. 08: § 5437. C.L. § 2841. CSA: C. 139, § 27. CRS 53: § 116-5-7. C.R.S. 1963: § 116-5-7.

Cross references: For the penalty for failure of railroad company to commence construction, see § 40-20-105.

40-24-108. Railroad subject to assignment. Any person, company, corporation, or association obtaining any right-of-way or franchise to construct, operate, and maintain an electric railroad along, over, and across any county road within such county has the right to assign and transfer such franchise and right-of-way to any other person, company, corporation, or association, and the person, company, corporation, or association taking such franchise and right-of-way shall be subject to all the requirements and provisions of sections 40-24-102 to 40-24-108.

Source: L. 07: p. 410, § 7. R.S. 08: § 5438. C.L. § 2842. CSA: C. 139, § 28. CRS 53: § 116-5-8. C.R.S. 1963: § 116-5-8.

40-24-109. Protection of employees from weather. (Repealed)

Source: L. 01: p. 379, § 1. R.S. 08: § 5439. C.L. § 2843. CSA: C. 139, § 29. CRS 53: § 116-5-9. C.R.S. 1963: § 116-5-9. L. 2000: Entire section repealed, p. 219, § 8, effective March 29.

40-24-110. Motormen to have unobstructed view - trailing car excepted. (Repealed)

Source: L. 01: p. 379, § 2. R.S. 08: § 5440. C.L. § 2844. CSA: C. 139, § 30. CRS 53: § 116-5-10. C.R.S. 1963: § 116-5-10. L. 2000: Entire section repealed, p. 219, § 8, effective March 29.

40-24-111. Each day an offense - penalty. (Repealed)

Source: L. 01: p. 380, § 3. R.S. 08: § 5441. C.L. § 2845. CSA: C. 139, § 31. CRS 53: § 116-5-11. C.R.S. 1963: § 116-5-11. L. 2000: Entire section repealed, p. 219, § 8, effective March 29.

ARTICLE 25

Express Business

40-25-101 to 40-25-103. (Repealed)

Source: L. 2000: Entire article repealed, p. 219, § 8, effective March 29.

Editor's note: This article was numbered as article 6 of chapter 116, C.R.S. 1963, and was not amended prior to its repeal in 2000. For the text of this article prior to 2000, consult the 1999 Colorado Revised Statutes.

ARTICLE 26

Railroad Tickets

40-26-101 to 40-26-109. (Repealed)

Source: L. 2000: Entire article repealed, p. 219, § 8, effective March 29.

Editor's note: This article was numbered as article 7 of chapter 116, C.R.S. 1963. For amendments to this article prior to its repeal in 2000, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

ARTICLE 27

Killing Stock - Fencing

40-27-101.	Owner driving stock on track.	40-27-108.	Notification of owner and claim agent.
40-27-102.	Fence right-of-way - cattle guards.	40-27-109.	Proof of ownership and value.
40-27-103.	Liability for injury to stock.	40-27-110.	Value of animal - finding of board.
40-27-104.	Compliance prima facie defense.	40-27-111.	Owner declining estimate.
40-27-105.	Burden of proof.	40-27-112.	Time for payment and suit.
40-27-106.	Engineer to notify agent - inspection.	40-27-113.	Evidence destroyed - penalty.
40-27-107.	Reports of inspector and foreman.	40-27-114.	Care of animals injured.
		40-27-115.	Admission of liability - waiver of claim.

40-27-101. Owner driving stock on track. If the owner of any stock drives any stock on the line of the track of any railway company or corporation, with intent to injure such company or corporation, and if said stock is killed or injured, the owner shall not receive any damages from the railroad company or corporation therefor, and shall be liable to such company or corporation for all damage such company or corporation may suffer in consequence of said act, and commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.; but nothing in this section shall be construed to prevent any person from allowing his or her stock to pasture on the lands adjacent to the line of such railroads or to drive his or her stock over or across any such track at suitable times and places.

Source: G.L. § 2573. G.S. § 2808. R.S. 08: § 5475. C.L. § 2858. CSA: C. 139, § 44. CRS 53: § 116-8-1. C.R.S. 1963: § 116-8-1. L. 77: Entire section amended, p. 887, § 75, effective July 1, 1979. L. 89: Entire section amended, p. 853, § 147, effective July 1. L. 2002: Entire section amended, p. 1559, § 360, effective October 1.

Editor's note: The effective date for amendments made to this section by chapter 216, L. 77, was changed from July 1, 1978, to April 1, 1979, by chapter 1, First Extraordinary Session, L. 78, and was subsequently changed to July 1, 1979, by chapter 157, § 23, L. 79. See *People v. McKenna*, 199 Colo. 452, 611 P.2d 574 (1980).

Cross references: For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

ANNOTATION

Former provision was held unconstitutional as violating the due process clause of the United States constitution in *Denver & R. G. Ry. v. Henderson*, 10 Colo. 1, 13 P. 910 (1887); *Atchison, T. & S. F. R. R. v. Betts*, 10 Colo. 431, 15 P. 821 (1887); *Denver & R. G. Ry. v. Crawford*, 11 Colo. 598, 19 P. 673 (1888); *Union Pac. Ry. v. Proctor*, 12 Colo. 194, 20 P. 615 (1888); *Union Pac. Ry. v. Sternberg*, 13 Colo. 141, 21 P. 1021 (1889); *Denver & R. G. Ry. v. Stewart*, 1 Colo. App. 227, 28 P. 658 (1891); *Denver & R. G. Ry. v. Outcalt*, 2 Colo. App. 395, 31 P. 177 (1892); *Wadsworth v. Union Pac. Ry.*, 18 Colo.

600, 33 P. 515, 36 Am. St. R. 309, 23 L.R.A. 812 (1893); *Union Pac. Ry. v. Kerr*, 19 Colo. 273, 35 P. 47 (1893); *Rio Grande Ry. v. Vaughn*, 3 Colo. App. 465, 34 P. 264 (1893); *Rio Grande W. Ry. v. Chamberlin*, 4 Colo. App. 149, 34 P. 1113 (1893); *Atchison, T. & S. F. R. R. v. Tanner*, 19 Colo. 559, 36 P. 541 (1894); *Rio Grande W. Ry. v. Whitson*, 4 Colo. App. 426, 36 P. 159 (1894); *Union P. R. R. v. Bullis*, 6 Colo. App. 64, 39 P. 897 (1895); *Sweetland v. Atchison, T. & S. F. R. R.*, 22 Colo. 220, 43 P. 1006 (1896); *Denver & R. G. R. R. v. Wheatley*, 7 Colo. App. 284, 43 P. 450 (1896); *Denver & R. G. R. R. v. Thompson*,

12 Colo. App. 1, 54 P. 402 (1898); Burlington & M. R. R. v. Campbell, 14 Colo. App. 141, 59 P. 424 (1899).

40-27-102. Fence right-of-way - cattle guards. (1) Every railway company or corporation whose lines or roads, or any part thereof, are open for use, within six months after the lines of such railways or any part thereof are open, except at the crossings of public roads and highways and within the limits of incorporated towns and cities or the yard limits of established stations, shall erect and thereafter maintain fences on the sides of their roads, or the part thereof open to use, where the same pass through, along, or adjoining enclosed or cultivated fields or unenclosed lands, with openings and gates therein to be hung and have latches and hinges, so that they may be opened and shut at all necessary farm crossings of the road, for the use of the proprietors or owners of the land adjoining such railroad, and shall construct and maintain at all public road crossings good and sufficient cattle guards.

(2) Such fences, gates, and cattle guards for the protection of livestock shall be constructed as defined in section 35-46-101 (1), C.R.S., and shall be amply sufficient to prevent horses, mules, asses, and cattle from getting on said railroads; and, so long as such fences and guards, or any part thereof, are not sufficient or not in sufficiently good repair to accomplish the objective for which they are intended, such railroad corporation shall be liable for any and all damages which are done by the agent, employees, engines, trains, or cars of any other corporation permitted and running over and upon their said railroad to any such cattle, horses, asses, or mules thereon. When such fences, gates, and guards have been built and duly made and are kept in good and sufficient repair, such railroad corporation shall not be liable for any such damages unless the same were occasioned by the negligence or carelessness of such railway company or corporation or the assignee or lessee thereof.

(3) Where gates are constructed and maintained at farm crossings, opening into enclosed pastures or cultivated fields, it is the duty of the owner or occupant of such fields or pastures so provided with gates to see that such gates are kept closed at all times when not actually in use, and where it is shown that any such gate has been left open, the owner or occupant of such lands shall be held responsible for any stock killed or damaged because of such open gate.

Source: L. 11: p. 400, § 1. C.L. § 2863. CSA: C. 139, § 49. CRS 53: § 116-8-2. C.R.S. 1963: § 116-8-2.

ANNOTATION

- I. General Consideration.
- II. Evidence.

I. GENERAL CONSIDERATION.

Annotator's note. Cases material to § 40-27-102 decided prior to its earliest source, L. 11, p. 400, § 1, have been included in the annotations to § 40-27-102.

This section is penal, in derogation of the common law, and should be strictly construed. Colo. & S. Ry. v. Neville, 41 Colo. 393, 92 P. 956 (1907); Denver & R. G. R. v. Kelso, 40 Colo. 84, 90 P. 65 (1907).

Situation in which railway not liable. Where an animal is near to the tracks of a railway, and, frightened by an approaching train, attempts to cross the track, but not until the train is so near that the engineer is unable to come to a stop with safety, the railway company is not liable for the death of the animal which ensues. Denver & R. G. R. v. Bird, 60 Colo. 259, 152 P. 911 (1915).

A railroad is not liable for an injury to an animal within the yard limits of an established station. It is not required by this section in order to exonerate the railway company, that the yard limits should be marked by sign or otherwise. Denver & R. G. R. v. Bird, 60 Colo. 259, 152 P. 911 (1915).

The yard limits of a railway station must be regarded as at least coextensive with the sidetracks and switches existing and customarily used for the transaction of business at such station. Denver & R. G. R. v. Siminoe, 65 Colo. 73, 173 P. 541 (1918).

A railroad company is not required to fence public roads or highways. Colo. & S. Ry. v. Neville, 41 Colo. 393, 92 P. 956 (1907); Denver & R. G. R. v. Dunn, 46 Colo. 150, 103 P. 387 (1909).

The owner of stock killed is bound by the procedure established only when the railroad company complies with its provisions, and if the company fails in this respect, the owner may

bring an action under this section and §§ 40-27-103, 40-27-104, and 40-27-105 to recover the actual value of the animals killed. *Chicago, R. I. & Pac. Ry. v. Eyster*, 69 Colo. 168, 169 P. 1181 (1918).

Merely because an animal may be near the track of a railroad does not require an engineer to check the speed of his train unless there is something to indicate that the animal may go upon the track. *Rio Grande W. Ry. v. Boyd*, 44 Colo. 119, 96 P. 781 (1908); *Chicago, B. & Q. R. v. Church*, 49 Colo. 582, 114 P. 299 (1911); *Davis v. Holly Sugar Corp.*, 74 Colo. 331, 221 P. 1091 (1923).

A railway company is not to be assessed the full value of an animal not seriously injured by one of its trains, though the animal is afterwards shot, no evidence being given as to the person by whom it was shot nor of any necessity to put it to death. *Denver & R. G. R. R. v. Brennaman*, 45 Colo. 264, 100 P. 414 (1909).

Railroad which receives a right-of-way by congressional grant cannot legally abandon a portion of that right-of-way. *Allard Cattle Co. v. Colo. & S. Ry.*, 187 Colo. 1, 530 P.2d 503 (1974).

Absent an act of congress providing for the disposition of specific portions of rights-of-way granted by congress, a third party may not acquire title to portions of such rights-of-way by adverse possession or abandonment of land. *Allard Cattle Co. v. Colo. & S. Ry.*, 33 Colo. App. 39, 516 P.2d 123 (1973), *aff'd*, 187 Colo. 1, 530 P.2d 503 (1974).

Where congress by the general railroad right-of-way act provided for grants to railroads of rights-of-way 100 feet in width on each side of a railroad bed across public lands, and where a railroad constructed fences, in compliance with this section, 50 feet in width on each side of the railroad bed, the outer 50 feet on each side of the tracks which lay outside of the fences could not be diminished by either adverse possession or abandonment. *Allard Cattle Co. v. Colo. & S. Ry.*, 33 Colo. App. 39, 516 P.2d 123 (1973), *aff'd*, 187 Colo. 1, 530 P.2d 503 (1974).

Applied in *Atchison, T. & S. F. Ry. v. North Colo. Springs Land & Imp. Co.*, 659 P.2d 702 (Colo. App. 1982).

II. EVIDENCE.

Plaintiff must show that railroad was subject to provisions of this section. When plaintiff seeks to recover the penalty from the defendant railroad, it is necessary to bring it within the purview of this section and to show that it was such a railroad as was subject to its provisions. *Denver & R. G. R. R. v. Kelso*, 40 Colo. 84, 90 P. 65 (1907).

Plaintiff cannot recover in the absence of proof that any of defendant's lines or any part thereof, were "open for use" within six months

from the passage of the act or within six months from the time it took effect, or that defendant's lines of railroad were not open for use at the date of the passage of the act. *Colo. & S. Ry. v. Neville*, 41 Colo. 393, 92 P. 956 (1907); *Denver & S. Ry. v. Kelso*, 40 Colo. 84, 90 P. 65 (1907).

Where no violation of section involved plaintiff must show injury was result of defendant's negligence. Where, in an action for negligence, no violation of this section is involved, plaintiff must show that the injury complained of was the result of defendant's negligence; and such negligence must be clearly established either by direct or circumstantial evidence. *Denver & R.G.R.R. v. Dunn*, 46 Colo. 150, 103 P. 387 (1909); *Chicago, B. & Q. R. R. v. Church*, 49 Colo. 582, 114 P. 299 (1911); *Davis v. Holly Sugar Corp.*, 74 Colo. 331, 221 P. 1091 (1923).

Demurrer to complaint alleging railroad had done none of the things required by this section not sustained. In an action to recover the value of livestock killed by the trains of a railway company, where the complaint alleged that the company had done none of the things required by this section, a judgment sustaining the demurrer thereto was reversed. *Adams v. Chicago, B. & Q. R. R.*, 67 Colo. 2, 185 P. 271 (1919).

Where the plaintiff produces evidence sufficient to sustain a verdict in his favor, a nonsuit is error. *Adams v. Chicago, B. & Q. R. R.*, 67 Colo. 2, 185 P. 271 (1919).

"Open to use" requirement not fulfilled. The fact that a railroad might have been built some years earlier does not fulfill the requirement that it be shown that this particular railroad company, which is the defendant, either had a road "open to use" at the time the act became a law or that it succeeded to some company having such road so open to use. *Denver & S. Ry. v. Kelso*, 40 Colo. 84, 90 P. 65 (1907).

The essential facts should be pleaded and proven, and, in the absence of pleadings in the justice courts, the testimony must show such facts affirmatively and be sufficiently comprehensive to show defendant's liability under the statute. *Denver & R. G. R. R. v. Kelso*, 40 Colo. 84, 90 P. 65 (1907).

Failure of a railroad company to maintain a fence is negligence per se, and if such negligence is the cause of the accidental killing of stock, the owner may recover. *Chicago, R. I. & Pac. Ry. v. Eyster*, 69 Colo. 168, 169 P. 1181 (1918).

Presumed that animals come upon the track at the point where they are killed. In an action for the value of livestock killed upon the unenclosed tracks of a railway, at a point where enclosure is required, it will be presumed, nothing appearing to the contrary, that the animals came upon the track at the point where they

were killed. *Denver & R. G. R. R. v. Wright*, 64 Colo. 310, 171 P. 499 (1918).

Absolute liability until evidence rebutted. The evidence disclosed that the road was unfenced and there was no enclosure where the animals were killed. This established proof of absolute liability, until the company showed that the road was enclosed as required by law or that the killing was at a point where no enclosure was required. *Denver & R. G. R. R. v. Wright*, 64 Colo. 310, 171 P. 499 (1918).

Person not skilled in handling trains may be a competent witness as to the velocity. *Colo. & S. Ry. v. Webb*, 36 Colo. 224, 85 P. 683 (1906).

Not prejudicial error to allow person not expert to testify as to quality of the horse. See *Colo. & S. Ry. v. Webb*, 36 Colo. 224, 85 P. 683 (1906).

Farmer's neighbors competent witnesses. In an action against a railroad company for negligently killing an animal, plaintiff's neighbors,

who were farmers and owners of similar animals and used them and sometimes bought and sold them, were competent witnesses as to the value of the animal, although they testified that they did not know the "market value" of the animal in that vicinity, and did not know that there was any "market value" for such animals. *Burlington & M. R. R. R. v. Campbell*, 14 Colo. App. 141, 59 P. 424 (1899).

Mere finding of dead or injured animal near a railroad track is not proof that it was killed or injured by the railroad. *Burlington & M. R. R. R. v. Campbell*, 14 Colo. App. 141, 59 P. 424 (1899).

Such killing or injury may be shown by circumstantial evidence and it is not necessary to prove such facts by eyewitnesses. *Burlington & M. R. R. R. v. Campbell*, 14 Colo. App. 141, 59 P. 424 (1899).

Evidence showing negligence on part of engineer. *Colo. & S. Ry. v. Charles*, 36 Colo. 221, 84 P. 67 (1906).

40-27-103. Liability for injury to stock. Any railroad company running or operating its roads in this state and failing to fence on both sides thereof against livestock running at large at all points shall be absolutely liable to the owners of any such livestock killed, injured, or damaged by their agents, employees, engines, or cars or by the agents, employees, engines, or cars belonging to any other railroad company or corporation running over and upon such road.

Source: L. 11: p. 401, § 2. C.L. § 2864. CSA: C. 139, § 50. CRS 53: § 116-8-3. C.R.S. 1963: § 116-8-3.

40-27-104. Compliance prima facie defense. Any railway company or corporation or the assignee or lessee thereof whose road is enclosed with good and sufficient fences, gates, and cattle guards, as provided in section 40-27-102, capable of keeping such animals from being upon such road may plead and prove the same as a defense to any action under sections 40-27-102 to 40-27-113 for any killing, damaging, or injury to such animals occurring within such enclosure; but such plea or fact shall not be held to preclude the owner or his agent from showing that such killing, damage, or injury was caused by the negligence or carelessness of such railway company or corporation or the assignee or lessee thereof, for the purpose of showing liability notwithstanding such fencing.

Source: L. 11: p. 402, § 3. C.L. § 2865. CSA: C. 139, § 51. CRS 53: § 116-8-4. C.R.S. 1963: § 116-8-4.

40-27-105. Burden of proof. The killing or injury of any animal by a railway company or corporation shall be prima facie evidence of the negligence of said railway company or corporation, and every railway company or corporation in this state and every assignee or lessee thereof shall be liable to pay to the owner the full value of each animal killed and all damages to each animal injured by the engines or cars of such railway company or corporation in this state or the assignee or lessee thereof unless the railway company or corporation, by competent evidence, shall affirmatively show that such killing or wounding was not caused by the negligence of such railway company or corporation or the assignee or lessee thereof. On the trial of all actions for damages arising under this article, in order to admit evidence of absence of negligence, the defendants shall first be held to show a compliance with sections 40-27-102 to 40-27-113 in relation to the erection and maintenance of fences, gates, and cattle guards.

Source: L. 11: p. 402, § 4. C.L. § 2866. CSA: C. 139, § 52. CRS 53: § 116-8-5. C.R.S. 1963: § 116-8-5.

ANNOTATION

Annotator's note. Cases material to this section decided prior to its earliest source, L. 11, p. 402, § 4, have been included in the annotations to this section.

Section only applicable when animals are killed or injured at points on the railroad where the law makes it the duty of a railroad company to fence its right-of-way. *Denver & R. G. R. R. v. Dunn*, 46 Colo. 150, 103 P. 387 (1909); *Davis v. Holly Sugar Corp.*, 74 Colo. 331, 221 P. 1091 (1923).

Fact that plaintiff does not alone rely on section does not change burden of proof. The fact that plaintiff, suing for the value of an animal killed at a railroad crossing, in making his case does not alone rely on this section creating a presumption of negligence from the killing, but also introduced evidence of the negligence of the engineer and fireman, does not change the rule of burden of proof. *Rio Grande W. Ry. v. Boyd*, 44 Colo. 119, 96 P. 781 (1908).

Under this section the killing or injury of an animal by a railway company is prima facie evidence of negligence on the part of the company. When the killing is admitted, the burden is upon the company to disprove negligence. *Denver & R. G. R. R. v. Hopkins*, 69 Colo. 203, 193 P. 556 (1920).

Objection by company that no negligence is shown is without merit where prima facie case is not overcome. The company does not overcome the prima facie case or presumption of negligence by presenting and establishing by competent proof, any of the defenses which this section says it may interpose to such an action. It is the duty of the defendant to introduce any evidence it has, showing why plaintiff should not recover on the prima facie case made. If it fails to offer any testimony to the effect, the objection that no negligence was shown, is without merit. *Denver & R. G. R. R. v. Wheatley*, 64 Colo. 598, 173 P. 396 (1918).

Plaintiff can recover amount of damages proven. This section makes the mere happening of an accident, prima facie evidence of negligence on the part of the railroad company, and when the evidence establishes that the plaintiff's animal was injured on the railroad track by an engine of the defendant, a prima facie case of negligence is made, and plaintiff can recover the amount of damages proven. *Denver & R. G. R. R. v. Wheatley*, 64 Colo. 598, 173 P. 396 (1918).

Unless railroad shows affirmatively by proof that the killing was not caused by negligence. *Chicago, B. & Q. R. R. v. Roberts*, 10 Colo. App. 87, 49 P. 428 (1897), rev'd on other grounds, 26 Colo. 329, 57 P. 1076 (1899).

Unless it shows that its road was enclosed with a good and lawful fence. *Chicago, B. & Q. R. R. v. Roberts*, 10 Colo. App. 87, 49 P. 428 (1897), rev'd on other grounds, 26 Colo. 329, 57 P. 1076 (1899).

If the company fails in this regard it is liable regardless of any questions as to fences or yard limits. *Denver & R. G. R. R. v. Hopkins*, 69 Colo. 203, 193 P. 556 (1920).

If company shows that there was a lawful fence then the burden is on plaintiff to show negligence. In an action against a railroad company for killing stock, where the evidence shows that the road at the point where the animals were killed was enclosed by a good and lawful fence, the burden is then on the plaintiff to show that the killing was through the negligence of the railroad company. *Atchison, T. S. F. Ry. v. Cahill*, 11 Colo. App. 245, 52 P. 1111 (1898).

Necessary to allege negligence of company under the common law. In an action, under the common law, against a railroad company for killing stock it is necessary to allege that the animal was killed by the negligence of the company, notwithstanding the provision of the statute placing the burden of proof upon the company to show that the killing was not caused by its negligence. *Burlington & M. R. R. R. v. Shelter*, 6 Colo. App. 246, 40 P. 157 (1895); *Denver & R. G. R. R. v. Thompson*, 12 Colo. App. 1, 54 P. 402 (1898).

Exercise of necessary care by engineer and fireman question for jury. In an action for the value of an animal killed at a railroad crossing, where the evidence is conflicting, the question of whether the engineer and fireman exercised the necessary care to ascertain if an animal were approaching the crossing, is for the jury. *Rio Grande W. Ry. v. Boyd*, 44 Colo. 119, 96 P. 781 (1908).

Where an engineer and fireman, by the exercise of proper care, could have discovered an animal at a crossing and slackened the speed of the train in ample time to have prevented killing it, their negligence was the proximate cause of the killing, and whether the owner was guilty of contributory negligence in turning the animal out on the highway in such close proximity to the crossing, was not involved. *Rio Grande W. Ry. v. Boyd*, 44 Colo. 119, 96 P. 781 (1908).

Letter of claim agent inadmissible in evidence. In a suit against a railroad company for killing an animal, a letter from the claim agent of the company to the owner was inadmissible in evidence as tending to prove acknowledgment of liability. *Chicago, B. & Q. R. R. v. Roberts*, 26 Colo. 329, 57 P. 1076 (1899).

40-27-106. Engineer to notify agent - inspection. (1) Whenever any cattle, sheep, horses, mules, or asses are killed or injured by any train, engine, or car upon any railway in this state, it is the duty of the engineer operating the engine, train, or car to notify the station agent at the first station at which the train stops after the killing or wounding or the superintendent or other proper official at the end of the division where the engineer's run ends. Should none of the employees of the train be aware of such killing or wounding, then it is the duty of any employee of the railway who becomes aware of such accident to notify the station agent at the nearest station to the point where the accident occurred.

(2) It is the duty of the railroad company, through its station agent or such other official as may be designated, upon receipt of the information of the killing or wounding of any such livestock by any engine, train, or car, as soon as may be, to notify the section foreman upon whose section the accident occurred and also the nearest inspector of the state board of stock inspection commissioners.

(3) It is the duty of the section foreman upon receiving the information to go to the point where the animal was killed or injured as soon as may be and there inspect the same, securing a full description of the animal together with any brands or marks that are upon the same and such other details as may serve to determine the ownership of such animal.

(4) It is the duty of said stock inspector, as soon as may be after receiving said notice, to go to the point where the animal was killed or injured and there inspect the same, securing a full description of the animal together with any brands or marks that may be on the same and such other details as may serve to determine ownership of such animal. It is also the duty of the inspector to estimate as nearly as possible the probable value of said animal if killed or the amount of damages if injured.

(5) Should the animal be so badly injured that it is in great suffering and cannot live or recover, it is the duty of either the stock inspector or the section foreman upon inspection to immediately kill the animal. If through any cause such an authorized inspector does not appear to inspect such animal so killed within thirty-six hours after such killing, it is the duty of the section foreman to remove the hide of said animal and preserve the same until it has been inspected by such inspector, and thereafter the carcass of such animal shall be disposed of by the railroad company, without prejudice to its rights, in such manner as it may determine.

Source: L. 11: p. 402, § 5. C.L. § 2867. CSA: C. 139, § 53. CRS 53: § 116-8-6. C.R.S. 1963: § 116-8-6.

Cross references: For the creation of a state board of stock inspection commissioners, see article 41 of title 35.

ANNOTATION

Meeting section's requirements of notice to station agent. Where in an action for the value of an animal killed at a railroad crossing, the plaintiff testified that he could not give the name of the person on whom he served notice that the animal had been killed, but that he answered as the ticket agent of the railroad company at its depot, the evidence was sufficient to establish

that the person served was the ticket or station agent of the railroad company, so as to meet the requirements of this section, providing for notice to the ticket or station agent of the railroad company. *Rio Grande W. Ry. v. Boyd*, 44 Colo. 119, 96 P. 781 (1908) (decided prior to L. 11, p. 402, § 5).

40-27-107. Reports of inspector and foreman. After making such examination it is the duty of the stock inspector to immediately forward a report to the secretary of the state board of stock inspection commissioners showing all the facts in regard to the killing or wounding of said animal, together with a full description and the estimated value of same, and it is the duty of the foreman of the section to likewise make a similar report to the claim agent of said railroad company or corporation or the assignee or lessee thereof.

Source: L. 11: p. 403, § 6. C.L. § 2868. CSA: C. 139, § 54. CRS 53: § 116-8-7. C.R.S. 1963: § 116-8-7.

40-27-108. Notification of owner and claim agent. (1) Upon receipt of the information from any authorized stock inspector of the killing or wounding of any animal by any railroad company or by its engine, cars, or trains, it is the duty of the secretary of the state board of stock inspection commissioners to notify the owner of said animal so killed or injured, informing him of the facts and the estimated value placed upon said animal by the stock inspector, and he shall also send a copy of this report to the claim agent or other authorized official of the railway company responsible for said killing or injuring.

(2) Should the secretary be unable to determine from the description furnished by the stock inspector the owner or probable owner of such animal so killed or injured, he shall cause an advertisement to be placed in a newspaper published in the county where said killing or wounding occurred, describing the animal so killed or injured, giving the marks or brands appearing on said animal, if any, and notifying the owner to appear within six months of the date of such killing or injuring and make claim for said animal. Said advertisement shall appear for two consecutive weeks. The cost of such advertisement shall be paid out of the brand inspection fund of the state board of stock inspection commissioners and shall be deducted from the amount of damages that may be awarded against the railway company or corporation. Should no claim be made for any animal so advertised, the cost of such advertising shall be paid by the railroad company responsible for such killing or injuring and shall be deposited in the brand inspection fund of said board.

Source: L. 11: p. 404, § 7. C.L. § 2869. CSA: C. 139, § 55. CRS 53: § 116-8-8. C.R.S. 1963: § 116-8-8. L. 2002: (2) amended, p. 1007, § 4, effective August 7.

40-27-109. Proof of ownership and value. (1) The owner or duly authorized agent of the owner of any animal so killed or injured by any railway company within this state, within thirty days after notice of such killing or injuring, shall make proof that he was the owner or authorized agent of the owner of the animal so killed or injured or that he is the owner of the recorded brand found upon the animal so killed or damaged at the time of such killing or damaging, and said proof may be delivered to the secretary of the state board of stock inspection commissioners who shall notify said railway company or corporation or the assignee or lessee thereof and make demand that said railway company pay to the said state board of stock inspection commissioners for the benefit of the owner the estimated value of said animal if killed or the estimated amount of damages if injured, which shall be settlement in full of all claim for such damage. The secretary of the state board of stock inspection commissioners shall give a receipt in full of said money when received and shall deposit the same in the brand inspection fund of said board, and after paying any advertising charges that may be due against said amount, the balance shall be paid out on voucher to the owner or authorized agent of the owner entitled to receive same.

(2) Should the owner or authorized agent of the owner of any such animal so killed or injured be dissatisfied with the estimated value placed upon such animal by the stock inspector, he may file with the said state board of stock inspection commissioners a claim for such amount of damage he thinks is justly due, and he has the right to produce such evidence in support of his claim as he may think necessary at any regular meeting of said board. Should the railroad company or corporation against whom such claim is made be dissatisfied with the estimated value placed upon any animal so killed or injured, it also has the right, through its claim agent or other authorized officer, to appear before the said state board of stock inspection commissioners at any regular meeting of said board and present such evidence as it may desire in support of its contention.

Source: L. 11: p. 404, § 8. C.L. § 2870. CSA: C. 139, § 56. CRS 53: § 116-8-9. C.R.S. 1963: § 116-8-9.

ANNOTATION

The railroad company's compliance with the act is a condition precedent to the requirement that the owner file proof of ownership as required by this section or a demand with

the station agent as required by § 40-27-111. *Chicago, R. I. & Pac. Ry. v. Eyster*, 69 Colo. 168, 169 P. 1181 (1918).

40-27-110. Value of animal - finding of board. Whenever any owner of any animal so killed or wounded or any railroad company or corporation or the assignee or lessee thereof submits any such claim for killing or damaging of livestock to the state board of stock inspection commissioners for determination as to what damage if any shall be paid by said railroad company, the finding of said state board of stock inspection commissioners in regard thereto shall be considered as an arbitration thereof. The finding of said board shall be final and shall also be so accepted by the said owner or his authorized agent or by said railroad company or corporation, and the state board of stock inspection commissioners shall have the right to make such investigation, through its inspectors or otherwise, as it may think necessary in order to determine the just and equitable amount that should be paid as damages or it may determine that no damages shall be paid, as the facts may warrant.

Source: L. 11: p. 405, § 9. C.L. § 2871. CSA: C. 139, § 57. CRS 53: § 116-8-10. C.R.S. 1963: § 116-8-10.

40-27-111. Owner declining estimate. Should any owner of any animal so killed or wounded by any railroad company decline to accept the estimated value of such animal or the estimated amount of such damage as fixed by the stock inspector or to submit the same to the arbitration of the said board, within six months he shall file sworn proof and affidavit of his claim with the station agent of such railroad company or corporation, and the railway company or corporation or the assignee or lessee thereof shall pay to such person delivering such demand the actual value of said animal if killed or the actual amount of damage if injured. If such claim for damages and such proof of ownership is not presented to the station agent of said railway company or corporation within six months of the date of such killing or injuring, it shall thereafter be forever barred.

Source: L. 11: p. 406, § 10. C.L. § 2872. CSA: C. 139, § 58. CRS 53: § 116-8-11. C.R.S. 1963: § 116-8-11.

ANNOTATION

Owner required to file demand with station agent. The owner is required to file his demand with the station agent as required by this section, only in the event he declines, after being notified, to accept the estimated value or to arbitrate. *Chicago, R. I. & Pac. Ry. v. Eyster*, 69 Colo. 168, 169 P. 1181 (1918); *Denver & R. G. R. R. v. Wright*, 64 Colo. 310, 171 P. 499 (1918); *Adams v. Chicago, B. & Q. R. R.*, 67 Colo. 2, 185 P. 271 (1919).

Owner not required to file until company complies with certain provisions. Under this section the owner of an animal killed upon the

tracks of a railway is not required to file a claim with the station agent, until nor unless the railway company has complied with the provisions of §§ 40-27-106 to 40-27-110, which are conditions precedent, imposed upon the railway company. *Denver & R. G. R. R. v. Wright*, 64 Colo. 310, 171 P. 499 (1918).

Where plaintiff was given no opportunity to decline, he is not required to file sworn proof and affidavit with the station agent. *Denver & R. G. R. R. v. Wright*, 64 Colo. 310, 171 P. 499 (1918).

40-27-112. Time for payment and suit. In case such railway company or corporation or the assignee or lessee thereof fails for thirty days after demand made therefor by the owner of any animal or his agent or attorney to pay such owner or his agent or attorney the value of said animal as claimed, then such owner, within six months from date of filing claim, may sue and recover the same from such railroad company or corporation or the assignee or lessee thereof in any court of competent jurisdiction in the county in which said animal was killed or injured, together with the legal interest thereon from the date such animal was killed or injured. Any person having a claim arising under the provisions of sections 40-27-102 to 40-27-113 may assign same in writing to any other claimant or person

for value or for the purpose of suit, who shall thereupon have all the rights and remedies of the assignor; but, in case it becomes necessary on the part of any owner to establish claim for any animal so killed or injured in a court of competent jurisdiction, he shall have the right to establish the actual and market value of such animal or the actual damage so sustained.

Source: L. 11: p. 406, § 11. C.L. § 2873. CSA: C. 139, § 59. CRS 53: § 116-8-12. C.R.S. 1963: § 116-8-12.

ANNOTATION

This section is not effective until the steps prescribed in § 40-27-109 for adjusting the loss have been taken. Adams v. Chicago, B. & Q. R. R., 67 Colo. 2, 185 P. 271 (1919).

The six months' statute of limitations is unavailing to defendant railroad where it does not comply with the law relating to the killing of stock, §§ 40-27-111 and 40-27-112 in operation and making them effective as to plaintiff. And where there is no pleading, proof, or claim that the company complied with such conditions, a plaintiff's voluntary act in filing a claim with the

station agent before bringing suit is unnecessary, merely gratuitous and fixes no limitation upon his right to sue and recover the full value under §§ 40-27-102 to 40-27-105. Denver & R. G. R. R. v. Wright, 64 Colo. 310, 171 P. 499 (1918).

This section fixes the time within which and the county in which suit shall be brought in case the railroad company fails to pay for cattle killed by it on demand by the owner as provided. Adams v. Chicago, B. & R. G. R. R., 67 Colo. 2, 185 P. 271 (1919).

40-27-113. Evidence destroyed - penalty. Any person who in any way conceals the evidence of the killing or wounding of any animal by any railroad train, engine, or cars on any railroad in this state or who in any way destroys or covers up the evidence that may lead to the identification of any animal so killed or injured is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than two hundred dollars for each offense, or by imprisonment in the county jail for not more than thirty days, or by both such fine and imprisonment.

Source: L. 11: p. 407, § 12. C.L. § 2874. CSA: C. 139, § 60. CRS 53: § 116-8-13. L. 63: p. 340, § 57. C.R.S. 1963: § 116-8-13.

40-27-114. Care of animals injured. Whenever any horse, cow, or other animal is injured by a train or otherwise on the right-of-way of any railroad company, it is the duty of trackwalkers, section men, brakemen, conductors, firefighters, engineers, and other employees of said company to care for such animal at once and report the facts to the nearest station agent and then notify the state board of stock inspection commissioners. It is the duty of the agent to give immediate notice, when possible, of the condition of such animal to the owner or the owner's agent whose duty it is forthwith upon receipt of notice to have such animal properly cared for. When immediate notice to the owner is not possible, it is the duty of the station agent to have such injured animal properly cared for without delay.

Source: L. 05: p. 286, § 1. R.S. 08: § 5497. C.L. § 2875. CSA: C. 139, § 61. CRS 53: § 116-8-14. C.R.S. 1963: § 116-8-14. L. 97: Entire section amended, p. 1031, § 64, effective August 6.

40-27-115. Admission of liability - waiver of claim. No act of the said railroad company, its employees or agent, or the owner of such injured animal shall be held to be an admission of liability or responsibility on the part of the said company for the injury of the said animal nor a waiver or relinquishment by said owner of any right or claim to damages from said company.

Source: L. 05: p. 286, § 2. R.S. 08: § 5498. C.L. § 2876. CSA: C. 139, § 62. CRS 53: § 116-8-15. C.R.S. 1963: § 116-8-15.

ARTICLE 28**Crossings****40-28-101 to 40-28-105. (Repealed)**

Source: L. 2000: Entire article repealed, p. 219, § 8, effective March 29.

Editor's note: This article was numbered as article 9 of chapter 116, C.R.S. 1963, and was not amended prior to its repeal in 2000. For the text of this article prior to 2000, consult the 1999 Colorado Revised Statutes.

ARTICLE 29**Safety Appliances**

40-29-101.	Switch lights.	40-29-109.	Violations - penalty - exception. (Repealed)
40-29-102.	Violation - penalty.	40-29-110.	Duties of commission.
40-29-103.	Jurisdiction of county courts.	40-29-111.	Compliance.
40-29-104.	Blocking switch rails, guard-rails, wing rails, and split rails. (Repealed)	40-29-112.	Complaint - hearing. (Repealed)
40-29-105.	Prima facie evidence of neglect. (Repealed)	40-29-113.	Order. (Repealed)
40-29-106.	Locomotive headlights - exceptions.	40-29-114.	Penalty. (Repealed)
40-29-107.	Violation - penalty.	40-29-115.	Extension of time. (Repealed)
40-29-108.	Track motorcars - lights, windshield, and wiper - top. (Repealed)	40-29-116.	Highway-rail crossing signalization fund created - annual appropriation.

40-29-101. Switch lights. Any railroad or railway company owning or operating within this state any line or branch of railroad connecting with any main line of railroad by means of a switch shall provide such switch with a reflector signal or with a suitable light such as is commonly used for such purposes and, if a light is provided, shall keep the same lighted from sunset on each and every calendar day of the year until sunrise on the following day.

Source: L. 03: p. 405, § 1. R.S. 08: § 5504. C.L. § 2882. CSA: C. 139, § 68. L. 45: p. 545, § 1. CRS 53: § 116-10-1. C.R.S. 1963: § 116-10-1.

40-29-102. Violation - penalty. Any railroad or railway company which violates, or permits to be violated, any of the provisions of section 40-29-101, or any officer, agent, or employee of such railroad or railway company who violates, or permits to be violated, any of the provisions of said section shall be fined not more than three hundred dollars for each violation.

Source: L. 03: p. 405, § 2. R.S. 08: § 5505. C.L. § 2883. CSA: C. 139, § 69. CRS 53: § 116-10-2. C.R.S. 1963: § 116-10-2.

40-29-103. Jurisdiction of county courts. The county court has jurisdiction of any offense under sections 40-29-101 and 40-29-102.

Source: L. 03: p. 405, § 3. R.S. 08: § 5506. C.L. § 2884. CSA: C. 139, § 70. CRS 53: § 116-10-3. C.R.S. 1963: § 116-10-3. L. 64: p. 307, § 267.

40-29-104. Blocking switch rails, guardrails, wing rails, and split rails. (Repealed)

Source: L. 1897: p. 258, § 1. R.S. 08: § 5507. C.L. § 2885. CSA: C. 139, § 71. CRS 53: § 116-10-4. C.R.S. 1963: § 116-10-4. L. 2000: Entire section repealed, p. 219, § 8, effective March 29.

40-29-105. Prima facie evidence of neglect. (Repealed)

Source: L. 1897: p. 258, § 2. R.S. 08: § 5508. C.L. § 2886. CSA: C. 139, § 72. CRS 53: § 116-10-5. C.R.S. 1963: § 116-10-5. L. 2000: Entire section repealed, p. 219, § 8, effective March 29.

40-29-106. Locomotive headlights - exceptions. It is the duty of every railroad corporation, receiver, or lessee thereof operating any line of railroad in this state to equip all locomotive engines used in the transportation of trains over said railroad with headlights of not less than twelve hundred candle power, measured without the aid of a reflector; but this section and section 40-29-107 shall not apply to locomotive engines which are regularly employed in yard service, known as switch engines; engines running for a distance of not more than sixteen miles within the limits of this state to complete their runs; those used exclusively between sunrise and sunset; nor engines going to or returning from repair shops when ordered to such shops for repair.

Source: L. 13: p. 516, § 1. C.L. § 2887. CSA: C. 139, § 73. CRS 53: § 116-10-6. C.R.S. 1963: § 116-10-6.

40-29-107. Violation - penalty. Any railroad company or the receiver or lessee thereof doing business in the state of Colorado which violates the provisions of section 40-29-106 shall be liable to the state of Colorado for a penalty of not less than one hundred dollars nor more than one thousand dollars for each and every locomotive not so equipped, counting each train hauled by such locomotive a separate and distinct offense, and such penalties shall be recovered and suit brought in the name of the state of Colorado in a court of proper jurisdiction in any county in or through which such line of railroad may be operated.

Source: L. 13: p. 516, § 2. C.L. § 2888. CSA: C. 139, § 74. CRS 53: § 116-10-7. C.R.S. 1963: § 116-10-7.

40-29-108. Track motorcars - lights, windshield, and wiper - top. (Repealed)

Source: L. 57: p. 601, § 1. CRS 53: § 116-10-8. L. 59: p. 634, § 1. C.R.S. 1963: § 116-10-8. L. 2000: Entire section repealed, p. 219, § 8, effective March 29.

40-29-109. Violations - penalty - exception. (Repealed)

Source: L. 57: p. 602, § 2. CRS 53: § 116-10-9. L. 59: p. 635, § 2. C.R.S. 1963: § 116-10-9. L. 2000: Entire section repealed, p. 219, § 8, effective March 29.

40-29-110. Duties of commission. For the purpose of protecting the health and safety of employees of railroads, the public utilities commission of Colorado shall prescribe standards of safety.

Source: L. 57: p. 603, § 1. CRS 53: § 116-10-10. C.R.S. 1963: § 116-10-10. L. 2000: Entire section amended, p. 219, § 9, effective March 29.

40-29-111. Compliance. (1) It is the duty of all persons engaged in the operation of railroads to comply with any regulation or order of the commission issued under the

provisions of section 40-29-110 and to furnish any information required by the commission for purposes of section 40-29-110. The provisions of said section shall not apply to any caboose operated on tracks of less than standard gauge nor to any caboose used only in yard service.

(2) The commission or its authorized agent may, during reasonable hours, enter the place of operation of any person engaged in the operation of railroads for the purpose of ascertaining whether the standards prescribed by authority of section 40-29-110 are being complied with.

Source: L. 57: p. 603, § 2. **CRS 53:** § 116-10-11. **C.R.S. 1963:** § 116-10-11. **L. 2000:** (1) amended, p. 219, § 10, effective March 29.

40-29-112. Complaint - hearing. (Repealed)

Source: L. 57: p. 604, § 3. **CRS 53:** § 116-10-12. **C.R.S. 1963:** § 116-10-12. **L. 2000:** Entire section repealed, p. 219, § 8, effective March 29.

40-29-113. Order. (Repealed)

Source: L. 57: p. 604, § 4. **CRS 53:** § 116-10-13. **C.R.S. 1963:** § 116-10-13. **L. 2000:** Entire section repealed, p. 219, § 8, effective March 29.

40-29-114. Penalty. (Repealed)

Source: L. 57: p. 604, § 5. **CRS 53:** § 116-10-14. **C.R.S. 1963:** § 116-10-14. **L. 2000:** Entire section repealed, p. 219, § 8, effective March 29.

40-29-115. Extension of time. (Repealed)

Source: L. 57: p. 604, § 6. **CRS 53:** § 116-10-15. **C.R.S. 1963:** § 116-10-15. **L. 2000:** Entire section repealed, p. 219, § 8, effective March 29.

40-29-116. Highway-rail crossing signalization fund created - annual appropriation. (1) The highway-rail crossing signalization fund is hereby created in the state treasury, in order to promote the public safety and to provide for the payment of the costs of installing, reconstructing, and improving automatic and other safety appliance signals or devices at crossings at grade of public highways or roads over the tracks of any railroad or street railway corporation in this state. None of the moneys in the highway-rail crossing signalization fund shall be used to pay any part of the cost of the installation, reconstruction, or improvement of any such signals or devices at any crossing when any part of such cost will be paid from moneys available under any federal or federal-aid highway act.

(2) Subject to annual appropriation by the general assembly, the sum of two hundred forty thousand dollars shall be paid from the general fund and credited to the highway-rail crossing signalization fund. Notwithstanding section 24-36-114 (1), C.R.S., any interest earned on the deposit and investment of moneys in the highway-rail crossing signalization fund shall remain in the fund and shall not be credited or transferred to the general fund or any other fund. Such earned interest moneys are hereby continuously appropriated to the public utilities commission for use for the purposes of the highway-rail crossing signalization fund.

Source: L. 2003: Entire section added, p. 1701, § 10, effective May 14. **L. 2008:** Entire section amended, p. 1807, § 34, effective July 1.

ARTICLE 30**Fire Guards**

40-30-101.	Fire guard by plowing.	40-30-103.	Liability of railroad company.
40-30-102.	Penalty for noncompliance.		

40-30-101. Fire guard by plowing. Every railroad corporation operating its lines of road or any part thereof within this state, between the fifteenth day of July and the first day of November of each and every year, upon each side of its line of road, shall plow as a fire guard a continuous strip of not less than six feet in width, which said strip of land shall run parallel with said line of railroad and be plowed in such a good and workmanlike manner as to effectually destroy and cover up the vegetation thereon and be sufficient to prevent the spread of fire. In addition thereto all such railroad corporations shall cause to be burned, between said dates, all the grass and vegetation lying between the said plowed strips and the track of said road, and the outer line of said strip of plowed land shall be upon the outer line of such corporation's right-of-way or, if upon land owned by said corporation, one hundred feet on either side from the center of the road. Such fire guard to be so plowed need not be constructed within the limits of any town or city, nor along the line of a railroad running through the mountains, nor in other lands where plowing would be impracticable, but the provisions respecting the burning of a strip on each side shall be duly conformed with whenever any vegetation is found along such line of road. The boards of county commissioners of the various counties of the state shall prescribe for their respective counties where the plowing of such fire guard and burning shall be done.

Source: L. 1874: p. 224, § 1. G.L. § 2235. L. 1879: p. 73, § 1. L. 1883: p. 198, § 1. G.S. § 2796. R.S. 08: § 5509. C.L. § 2889. CSA: C. 139, § 75. CRS 53: § 116-11-1. C.R.S. 1963: § 116-11-1.

40-30-102. Penalty for noncompliance. Any railroad company failing to comply with the provisions of section 40-30-101 shall be liable to pay a penalty of two hundred dollars for each and every mile or fractional part thereof of such strip of land it neglects to plow on either side of the line of its road in this state, in each and every year, the same to be collected in an action of debt in any court of competent jurisdiction in the name of the people of the state of Colorado, and when collected it shall be paid into the school fund of the county wherein the cause of action accrued. The action shall be brought within the time period prescribed in section 13-80-101, C.R.S.

Source: L. 1874: p. 225, § 2. G.L. § 2236. G.S. § 2797. R.S. 08: § 5510. C.L. § 2890. CSA: C. 139, § 76. CRS 53: § 116-11-2. C.R.S. 1963: § 116-11-2. L. 86: Entire section amended, p. 705, § 18 effective July 1.

40-30-103. Liability of railroad company. Every railroad company operating its line of road, or any part thereof, within this state shall be liable for all damages by fires that are set out or caused by operating any such line of road, or any part thereof, in this state, whether negligently or otherwise. Such damages may be recovered by the party damaged by a proper action in any court of competent jurisdiction; but said action shall be brought by the party injured within two years next ensuing after it accrues. The liability imposed in this section shall inure solely in favor of the owner or mortgagee of the property so damaged or destroyed by fire, and the same shall not pass by assignment or subrogation to any insurance company that has written a policy thereon.

Source: L. 03: p. 404, § 1. R.S. 08: § 5512. C.L. § 2892. CSA: C. 139, § 78. CRS 53: § 116-11-3. C.R.S. 1963: § 116-11-3.

ANNOTATION

- I. General Consideration.
- II. Construction of Statute.
- III. Liability of Railroads.
 - A. In General.
 - B. Negligence.
- IV. Evidence Establishing Liability.
 - A. In General.
 - B. Origin of Fire.
- V. Rights of Insurer.
- VI. Limitation of Actions.

I. GENERAL CONSIDERATION.

Annotator's note. Cases material to this section decided prior to its earliest source, L. 03, p. 404, § 1, have been included in the annotations to this section.

This section applies to all cases where the fire results from the operation of a railroad. *Denver & R. G. R. R. v. United States*, 241 F. 614 (8th Cir. 1917).

This section is intended to provide an indemnity to owners against loss from fire caused by the operation of railroads. It was enacted to settle upon whom the loss should fall, and because of the peculiar manner in which railway companies use this dangerous element, it casts the responsibility of employing it on them. *British Am. Assurance Co. v. Colo. & S. Ry.*, 52 Colo. 589, 125 P. 508 (1912).

The phrase, "whether negligent or otherwise", does not change the status of the railway company in relation to the owner in the least. The statutes eliminate all adjectives and differences as to the origin of the fire and exact but one condition, that is, that the fire was set out or caused by the operation of the road. If the fire originated in the operation of the road, it makes no difference how it otherwise occurred, the company is liable. *British Am. Assurance Co. v. Colo. & S. Ry.*, 52 Colo. 589, 125 P. 508 (1912).

This section embodies entire law on railway liability for causing fires. See *Rhinehart v. Denver & R. G. R. R.*, 61 Colo. 369, 158 P. 149 (1916); *Denver & R. G. R. v. United States*, 241 F. 614 (8th Cir. 1917).

This section takes away common-law action against railroads for negligence. See *Rhinehart v. Denver & R. G. R. R.*, 61 Colo. 369, 158 P. 149 (1916).

The United States, as a corporation or body politic, has no special privileges as a litigant. Its rights are no greater, no higher, no better, and no less than those of an individual. It is perfectly clear that, if an action had been brought by a private landowner after the prescribed two-year period, it could not be maintained under this statute, and the United States as the plaintiff is in no better position. *Denver &*

R. G. R. R. v. United States, 241 F. 614 (8th Cir. 1917).

Appointment of appraisers. A party damaged need not avail himself of the provision as to the appointment of appraisers as a condition precedent to the right of recovery. *Denver, T. & G. R. R. v. De Graff*, 2 Colo. App. 42, 29 P. 664 (1892).

The value of articles lost by fire which have no market value may be established by evidence of their cost, use, and condition at the time they were destroyed. *Union Pac. D. & G. Ry. v. Williams*, 3 Colo. App. 526, 34 P. 731 (1893).

The value of an article for which there is no home market may be ascertained by deducting the cost of transportation from the price to be obtained in the nearest market. *State Ins. Co. v. Taylor*, 14 Colo. 499, 24 P. 333 (1890); *Mouat Lumber Co. v. Wilmore*, 15 Colo. 136, 25 P. 556 (1890); *Union Pac. D & G. Ry. v. Williams*, 3 Colo. App. 526, 34 P. 731 (1893).

II. CONSTRUCTION OF STATUTE.

This section is not subject to constitutional objection. The power to enact the law imposing fire liability includes the power to prescribe the conditions upon which the right of its enforcement may be acquired, and with reference to which the rights of all persons interested as owners, insurers or otherwise, should be determined. And this act is not subject to constitutional objection. *Consumers' League v. Colo. & S. Ry.*, 53 Colo. 54, 125 P. 577 (1912); *Rhinehart v. Denver & R. G. R. R.*, 61 Colo. 369, 158 P. 149 (1916).

This section is not to be condemned as class legislation. This section, being general in its terms and applying to all cases within its scope, is not to be condemned as class legislation. The circumstance that no provision is made for the protection of others interested in the property, e.g. lessees, is not important. *Rhinehart v. Denver & R. G. R. R.*, 61 Colo. 369, 158 P. 149 (1916).

Such statutes are not penal but purely remedial in their nature; they apply to corporations which obtained their charters before as well as since their passage; and they should receive a liberal construction such as will justly promote their object. *Union Pac. Ry. v. De Busk*, 12 Colo. 294, 20 P. 752 (1888).

Such statutes are upheld as statutes of indemnity. *Home Ins. Co. v. Atchison, T. & S. F. R. R.*, 19 Colo. 46, 34 P. 281 (1893).

Even if this section was a special law, it would not for that reason be invalid, since it is settled in this jurisdiction that the necessity for a special law is a legislative question. *Brown v. City of Denver*, 7 Colo. 305, 3 P. 455 (1884);

Carpenter v. People ex rel. Tilford, 8 Colo. 116, 5 P. 828 (1884); Rhinehart v. Denver & R. G. R. R., 61 Colo. 369, 158 P. 149 (1916).

The words "railroad companies" should be construed to mean any body, company, or association of persons, whether technically incorporated or not, engaged in the operation of railroads. Such was obviously the meaning intended by the general assembly and this meaning avoids the necessity of declaring the act unconstitutional. Whenever a word or phrase of an act is used in more senses than one, that sense is always to be preferred which will sustain and give effect to the act, rather than the sense which would render the act unconstitutional and void. Union Pac. Ry. v. De Busk, 12 Colo. 294, 20 P. 752 (1888).

This section is but a reenactment of ancient common law. The adoption of this section, making railroad companies liable for damages by fire caused by the operation of their locomotive engines, is but the reenactment pro tanto of the ancient common law for the better protection of property exposed to such unusual dangers. Such matters are peculiarly within the control of the local legislatures, and such laws may be enacted, changed, or repealed to suit the varied conditions and circumstances of the people. Union Pac. Ry. v. De Busk, 12 Colo. 294, 20 P. 752 (1888).

This section is a general statute and need not be pleaded. Denver, T. & G. R. R. v. De Graff, 2 Colo. App. 42, 29 P. 664 (1892).

The title of this section is sufficiently broad to sustain the provision limiting the liability of the railway company to the owner or mortgagee. Rhinehart v. Denver & R. G. R. R., 61 Colo. 369, 158 P. 149 (1916).

III. LIABILITY OF RAILROADS.

A. In General.

Under this section a railroad company is made absolutely liable for all fires occasioned by their operation of the road. Whenever a fire breaks out along the line it is assumed that it was set out by the company, and the injured party has little difficulty in convincing a jury of his right to recover. Denver & R. G. R. R. v. Morton, 3 Colo. App. 155, 32 P. 345 (1893); Rhinehart v. Denver & R. G. R. R., 61 Colo. 369, 158 P. 149 (1916); Denver & R. G. R. R. v. United States, 241 F. 614 (8th Cir. 1917).

Whether negligence entered into the cause or not. This section imposes upon railroad companies absolute liability for all damages from fire set out in the operation of their roads, whether negligence entered into the cause or not, and the only question to be determined in cases of this character is, did the railway company set out or cause the fire in the operation of its road, if so, the answer is that the railroad is

liable. British Am. Assurance Co. v. Colo. & S. Ry., 52 Colo. 589, 125 P. 508 (1912).

The liability clause only reenacts the pre-existing liability. British Am. Assurance Co. v. Colo. & S. F. Ry., 52 Colo. 589, 125 P. 508 (1912); Denver & R. G. R. R. v. United States, 241 F. 614 (8th Cir. 1917).

The liability imposed, while not limited in amount, is limited to parties to which it shall inure, and in order that there might be no question concerning his limitation as to parties, there was added the further proviso "and the same shall not pass by assignment or subrogation to any insurance company", etc. The use of this language does not embrace another subject different than the one covered by the act, but is rather to emphasize the limitation upon or attached to the liability created by the act. Golden Canal Co. v. Bright, 8 Colo. 144, 6 P. 142 (1884); Clare v. People, 9 Colo. 122, 10 P. 799 (1886); Dallas v. Redman, 10 Colo. 297, 15 P. 397 (1887); Edwards v. Denver & R. G. R. R., 13 Colo. 59, 21 P. 1011 (1889); In re Breene, 14 Colo. 401, 24 P. 3 (1890); Stockman v. Brooks, 17 Colo. 248, 29 P. 746 (1892); Catron v. Bd. of Comm'rs, 18 Colo. 553, 33 P. 513 (1893); People ex rel. Funk v. Wright, 30 Colo. 439, 71 P. 365 (1902); Bd. of Comm'rs v. Bd. of Comm'rs, 32 Colo. 310, 76 P. 368 (1904); Rhinehart v. Denver & R. G. R. R., 61 Colo. 369, 158 P. 149 (1916).

B. Negligence.

This section makes the railroad company liable unconditionally irrespective of any negligence on its part. Home Ins. Co. v. Atchison, T. & S. F. R. R., 19 Colo. 46, 34 P. 281 (1893).

This section eliminates question of negligence. This section is simply declaratory of the common law, except that it eliminates the question of negligence—which was at common law an important factor—and makes the liability absolute, "if the fire was set out or caused by operating any such line of road", regardless of the question of negligence. Union Pac. Ry. v. De Busk, 12 Colo. 294, 20 P. 752 (1888); Denver, T. & G. R. R. v. De Graff, 2 Colo. App. 42, 29 P. 664 (1892).

It is not necessary in an action under this section to show negligence on part of the railroad company in causing the fire. Union Pac. Ry. v. Arthur, 2 Colo. App. 159, 29 P. 1031 (1892).

The doctrine of contributory negligence cannot be invoked by the defendant in an action under this section. Union Pac. Ry. v. Arthur, 2 Colo. App. 159, 29 P. 1031 (1892); Union Pac. D. & G. Ry. v. Williams, 3 Colo. App. 526, 34 P. 731 (1893).

Allegations as to negligence state a cause of action under this section. Denver & R. G. R. R. v. United States, 241 F. 614 (8th Cir. 1917).

IV. EVIDENCE ESTABLISHING LIABILITY.

A. In General.

Under this section an unaccepted offer to compromise is not admissible in evidence. *Denver, T. & G. R. R. v. De Graff*, 2 Colo. App. 42, 29 P. 664 (1892).

It is the duty of the court to nonsuit where the evidence does not warrant a verdict for the plaintiff. *Tripp v. Fiske*, 4 Colo. 24 (1877); *Sullivan v. Chrysolite Silver Mining Co.*, 21 F. 892 (8th Cir. 1884); *Union Pac. Ry. v. Sternberg*, 13 Colo. 141, 21 P. 1021 (1889); *Stratton v. Union Pac. Ry.*, 7 Colo. App. 126, 42 P. 602 (1895).

Verdict based on incompetent evidence should be set aside. Where there is no competent evidence upon which a verdict could have been predicated, and where it must have been the result of prejudice, it should be set aside. *Denver, T. & G. R. R. v. De Graff*, 2 Colo. App. 42, 29 P. 664 (1892).

Evidence as to condition of engine is admissible. In an action against a railroad company to recover damages for property destroyed by fire, testimony as to the condition of an engine belonging to defendant and which was shown to have passed on the track close to the place where the fire originated a few minutes before its discovery, by a witness who examined the engine a week or two weeks after the fire, is admissible and its exclusion is error. *Crissey & Fowler Lumber Co. v. Denver & R. G. R. R.*, 17 Colo. App. 275, 68 P. 670 (1902).

Where engine is identified, evidence as to other engines causing fires is inadmissible. In an action against a railroad company to recover damages for property destroyed by fire, where the only engine that could have set the fire was identified, evidence of the setting out of fires at other times and places by other engines belonging to defendant should be excluded. *Crissey & Fowler Lumber Co. v. Denver & R. G. R. R.*, 17 Colo. App. 275, 68 P. 670 (1902).

B. Origin of Fire.

The fact of the origin of the fire, like any other material fact, should be established. *Denver, T. & G. R. R. v. De Graff*, 2 Colo. App. 42, 29 P. 664 (1892); *Crissey & Fowler Lumber Co. v. Denver & R. G. R. R.*, 17 Colo. App. 275, 68 P. 670 (1902).

The evidence required to establish the origin of a fire must be direct and connect the fire with the operation of the railroad, or the circumstances must be such as to preclude all probability of the fire having originated in any other way. *Stratton v. Union Pac. Ry.*, 7 Colo. App. 126, 42 P. 602 (1895). See *Denver, T. & G. R.*

R. v. De Graff, 2 Colo. App. 42, 29 P. 664 (1892); *Denver & R. G. R. R. v. Morton*, 3 Colo. App. 155, 32 P. 345 (1893).

Considerable latitude is allowed in introducing testimony. From the nature and circumstances of cases under this section considerable latitude must be allowed in the introduction of testimony, and in the drawing of inferences as to the origin of the fire. *Union P. R. R. v. Jones*, 9 Colo. 379, 12 P. 516 (1886); *Union Pac. Ry. v. De Busk*, 12 Colo. 294, 20 P. 752 (1888).

Juries should not be allowed to infer or presume origin of fire. In cases of this kind, juries should not be allowed to infer or presume, for want of positive proof to the contrary, that the fire was communicated by the operating of the railroad. *Denver, T. & G. R. R. v. De Graff*, 2 Colo. App. 42, 29 P. 664 (1892).

Juries may infer or presume origin of fire where the evidence was sufficient to warrant the inference that the fire was caused by the defendant's passing train because several witnesses testified in substance to the springing up of the fire immediately upon the passing of the train, and that there was no fire on the premises before, and no other apparent cause for the fire. *Union Pac. Ry. v. De Busk*, 12 Colo. 294, 20 P. 752 (1888); *Cyle v. Denver & R. G. R. R.*, 37 Colo. 298, 86 P. 1010 (1906).

Sufficient evidence rebuts probability of fire originating in any other manner. While the jury, within certain limits, may be left to infer the fact from the circumstances proved, such proof should be sufficient to rebut the probability of the fire having originated in any other manner. *Denver, T. & G. R. R. v. De Graff*, 2 Colo. App. 42, 29 P. 664 (1892); *Crissey & Fowler Lumber Co. v. Denver & R. G. R. R.*, 17 Colo. App. 275, 68 P. 670 (1902).

The fact that a fire burned along the line of a railway is not evidence that it was caused by the railroad company. *Denver & R. G. R. R. v. Morton*, 3 Colo. App. 155, 32 P. 345 (1893).

The fact that railroad aided in putting out fire is not evidence that it was caused by the railroad company. Acts which follow an injury cannot be proven in civil actions for the purpose of establishing an antecedent negligence. That a railroad company aided in putting out a fire burning along its track does not tend to establish the fact that it caused the fire. *Denver & R. G. R. R. v. Morton*, 3 Colo. App. 155, 32 P. 345 (1893).

V. RIGHTS OF INSURER.

The insurer is not to be subrogated to rights of the insured. Any contract to the contrary, or an assignment by the insured to the insurer, in the policy, of the former's right of action, is without effect. *Rhinehart v. Denver & R. G. R. R.*, 61 Colo. 369, 158 P. 149 (1916).

Railroad cannot escape liability because insurer is also liable. The railroad company cannot escape its statutory liability because the owner has seen fit to contract and pay for indemnity against loss by fire from another source, and upon account of his close proximity to the railroad, probably having paid a higher rate than otherwise. In such cases all the authorities are to the effect that unless otherwise provided by statute the insurance feature is no defense to the railroad company. *Rhinehart v. Denver & R. G. R. R.*, 61 Colo. 369, 158 P. 149 (1916).

The owner of the property damaged or destroyed recovers his loss in full, though he has received the insurance money. *Rhinehart v. Denver & R. G. R. R.*, 61 Colo. 369, 158 P. 149 (1916).

The question of double payment to the owner is a matter purely between the insured and the insurer. The contracts of the appellants for the insurance of their property, with the insurance companies, and their subsequent conduct in relation thereto, are matters in which the wrong-doer had no concern, and which do not affect the measure of its liability. *Rhinehart v. Denver & R. G. R. R.*, 61 Colo. 369, 158 P. 149 (1916).

VI. LIMITATION OF ACTIONS.

The time fixed by this section is a condition of the right to sue at all, and a complaint which fails to state that the action was brought within that time fails to state a cause of action and is subject to demurrer. *Rhinehart v. Denver & R. G. R. R.*, 61 Colo. 369, 158 P. 149 (1916); *Denver & R. G. R. v. United States*, 241 F. 614 (8th Cir. 1917).

Failure to bring action within two years acts as limitation of the liability itself. The statute provides that suit must be brought within two years, and we think a failure to bring the suit within the time prescribed by the statute acts as a limitation of the liability itself, and in this respect differs from the ordinary statutes of limitation which affect the remedy only. *Denver & R. G. R. v. United States*, 241 F. 614 (8th Cir. 1917).

Meaning of "accrues". The word "accrues" is employed in different ways. It was evidently the intent of the general assembly to use it in this section in its ordinary sense, which would mean any right that had arisen, that is, was in existence before the passage of the law. *British Am. Assurance Co. v. Colo. & S. Ry.*, 52 Colo. 589, 125 P. 508 (1912).

ARTICLE 31

Overcharges

40-31-101. Railroad company claim agent.

40-31-102. Overcharges - recovery - damages.

40-31-101. Railroad company claim agent. Every railroad corporation or the lessee or receiver thereof or other person operating the same doing business in this state shall have and keep an agent or other person residing and having his office in the principal city or town along its line within the state whose duty it is and who is fully authorized by such railroad company to adjust and settle all claims for overcharge collected within this state and for all loss or damage. Any railroad corporation or the lessee or receiver thereof or other person so doing business in this state who fails to have and keep such agent or representative within such city or town shall be subject to a penalty of three thousand dollars for each and every month during which said railroad company or the lessee or receiver thereof or other person fails to have and keep said agent, which said penalty shall be recovered by the attorney general for the use of the state in an action commenced for that purpose in any court of competent jurisdiction of this state.

Source: L. 1881: p. 204, § 1. G.S. § 2799. R.S. 08: § 5513. C.L. § 2893. CSA: C. 139, § 79. CRS 53: § 116-12-1. C.R.S. 1963: § 116-12-1.

Cross references: For the lien of common carrier on goods and baggage, see § 38-20-105; for the general claim agent being required to have headquarters at general offices, see § 40-21-102.

ANNOTATION

This section and § 40-31-102 do not permit the recovery of the penalty prescribed by § 40-31-102 where the amount recovered in an

action on the claim was considerably less than the amount claimed. *Stupeck v. Union P. R. R.*, 200 F. 192 (8th Cir. 1912).

40-31-102. Overcharges - recovery - damages. (1) All overcharges made by any such railroad corporation or the lessee or receiver thereof or other person operating the same and all claims for loss or damage shall be paid by the representative of such railroad corporation or the lessee or receiver thereof or other person operating the same, appointed as provided in section 40-31-101, within sixty days after the same has been duly presented to such representative or agent for settlement accompanied by the expense bill of the freight on which such overcharge has been made or loss or damage suffered, together with a statement, properly verified, of the amount of such overcharge, loss, or damage. If any such railroad corporation or the lessee or receiver thereof or other person operating the same fails to refund the amount of such overcharge, loss, or damage within the time aforesaid, the person or corporation so suffering the same may recover from the railroad company or the lessee or receiver thereof or other person operating the same so in default the sum of one hundred dollars for each month and fraction of a month during which said company or the lessee or receiver thereof or other person operating the same is in default, which said sum may be recovered by the parties so aggrieved or their assignees in any court of competent jurisdiction.

(2) In any suit brought under this section, service upon such agent or representative of said railroad company or the lessee or receiver thereof or other person operating the same shall be deemed and held proper service upon such railroad company or the lessee or receiver thereof or other person operating the same; but the claimant shall not recover such penalty unless he recovers a larger amount in a court than the sum tendered him by such railroad corporation, agent, representative, lessee, or receiver or other person.

Source: L. 1881: p. 205, § 2. G.S. § 2800. R.S. 08: § 5514. C.L. § 2894. CSA: C. 139, § 80. CRS 53: § 116-12-2. C.R.S. 1963: § 116-12-2.

ARTICLE 32

Employees

40-32-101.	Working hours of trainmen. (Repealed)	40-32-105.	Conductors to have police powers. (Repealed)
40-32-102.	Violation - penalty. (Repealed)	40-32-106.	Eject disorderly passengers.
40-32-103.	Telegraph operators - qualifications. (Repealed)	40-32-107.	Arrest and take before county court.
40-32-104.	Violation - penalty. (Repealed)	40-32-108.	Duties of commission.
40-32-104.5.	Railroad peace officer - defined - scope of authority - responsibility and liability of railroad.	40-32-109.	Compliance. (Repealed)
		40-32-110.	Complaint - hearing. (Repealed)
		40-32-111.	Order. (Repealed)
		40-32-112.	Penalty. (Repealed)
		40-32-113.	Extension of time. (Repealed)

40-32-101. Working hours of trainmen. (Repealed)

Source: L. 01: p. 233, § 1. R.S. 08: § 5515. C.L. § 2895. CSA: C. 139, § 81. CRS 53: § 116-13-1. C.R.S. 1963: § 116-13-1. L. 2000: Entire section repealed, p. 219, § 11, effective March 29.

40-32-102. Violation - penalty. (Repealed)

Source: L. 01: p. 233, § 2. R.S. 08: § 5516. C.L. § 2896. CSA: C. 139, § 82. CRS 53: § 116-13-2. C.R.S. 1963: § 116-13-2. L. 2000: Entire section repealed, p. 219, § 11, effective March 29.

40-32-103. Telegraph operators - qualifications. (Repealed)

Source: L. 1891: p. 280, § 1. R.S. 08: § 5517. C.L. § 2897. CSA: C. 139, § 83. CRS 53: § 116-13-3. C.R.S. 1963: § 116-13-3. L. 96: Entire section repealed, p. 564, § 27, effective April 24.

40-32-104. Violation - penalty. (Repealed)

Source: L. 1891: p. 280, § 2. R.S. 08: § 5518. C.L. § 2898. CSA: C. 139, § 84. CRS 53: § 116-13-4. C.R.S. 1963: § 116-13-4. L. 96: Entire section repealed, p. 564, § 28, effective April 24.

40-32-104.5. Railroad peace officer - defined - scope of authority - responsibility and liability of railroad. (1) As used in this section, "railroad peace officer" means any person who is employed by a class I railroad corporation operating within the state of Colorado to protect and investigate offenses against the railroad corporation.

(2) A class I railroad corporation may employ a railroad peace officer to protect and investigate offenses against the corporation. Such railroad peace officer, while engaged in the conduct of his or her employment, shall possess and exercise all the powers vested in a peace officer of this state, pursuant to sections 16-2.5-101 and 16-2.5-142, C.R.S. Such authority shall be exercised only in the protection of persons, including on-duty employees, who are located on the class I railroad corporation's property and in the protection of all real and personal property in the current physical possession of such railroad corporation. Such authority may include engaging in immediate pursuit. In the exercise of his or her duties, the railroad peace officer shall have the power to arrest for violation of laws upon railroad property; except that he or she shall be required to notify the appropriate local law enforcement agency before applying for any warrant or lodging any criminal complaint unless the arrest is pursuant to section 40-32-107.

(3) The class I railroad corporation employing the railroad peace officer shall be solely responsible for any liability resulting from acts or omissions of the railroad peace officer which arise within the scope and course of his employment.

Source: L. 87: Entire section added, p. 1489, § 2, effective April 30. L. 2000: (2) amended, p. 219, § 12, effective March 29. L. 2003: (2) amended, p. 1627, § 55, effective August 6.

40-32-105. Conductors to have police powers. (Repealed)

Source: L. 13: p. 436, § 1. C.L. § 2899. CSA: C. 139, § 85. CRS 53: § 116-13-5. C.R.S. 1963: § 116-13-5. L. 2000: Entire section repealed, p. 219, § 11, effective March 29.

40-32-106. Eject disorderly passengers. When any passenger is guilty of disorderly conduct, or uses any obscene language to the annoyance and vexation of passengers and refuses to desist therefrom when requested by the conductor, the conductor is authorized to stop the train at any station and eject such passenger from the train, using only such force as may be necessary, and may command the assistance of the employees of the railroad company to assist in such removal; but nothing in this section shall relieve any railroad company from liability for damages to any passenger for an unwarranted exercise of such power by any such conductor.

Source: L. 13: p. 436, § 2. C.L. § 2900. CSA: C. 139, § 86. CRS 53: § 116-13-6. C.R.S. 1963: § 116-13-6. L. 2000: Entire section amended, p. 219, § 13, effective March 29.

40-32-107. Arrest and take before county court. When any passenger is guilty of any crime or misdemeanor upon any train, a railroad peace officer of such train may arrest such passenger, take such passenger before any county court in any county in which such crime or misdemeanor was committed, and file a complaint charging such passenger with such crime or misdemeanor.

Source: L. 13: p. 437, § 3. C.L. § 2901. CSA: C. 139, § 87. CRS 53: § 116-13-7. C.R.S. 1963: § 116-13-7. L. 64: p. 307, § 268. L. 2000: Entire section amended, p. 220, § 14, effective March 29.

40-32-108. Duties of commission. The commission shall establish standards for the employment of railroad peace officers relating to education or experience in law enforcement.

Source: L. 57: p. 606, § 1. CRS 53: § 116-13-8. C.R.S. 1963: § 116-13-8. L. 87: (2) added, p. 1490, § 3, effective April 30. L. 2000: Entire section amended, p. 220, § 15, effective March 29.

40-32-109. Compliance. (Repealed)

Source: L. 57: p. 606, § 2. CRS 53: § 116-13-9. C.R.S. 1963: § 116-13-9. L. 2000: Entire section repealed, p. 219, § 11, effective March 29.

40-32-110. Complaint - hearing. (Repealed)

Source: L. 57: p. 607, § 3. CRS 53: § 116-13-10. C.R.S. 1963: § 116-13-10. L. 2000: Entire section repealed, p. 219, § 11, effective March 29.

40-32-111. Order. (Repealed)

Source: L. 57: p. 607, § 4. CRS 53: § 116-13-11. C.R.S. 1963: § 116-13-11. L. 2000: Entire section repealed, p. 219, § 11, effective March 29.

40-32-112. Penalty. (Repealed)

Source: L. 57: p. 607, § 5. CRS 53: § 116-13-12. C.R.S. 1963: § 116-13-12. L. 2000: Entire section repealed, p. 219, § 11, effective March 29.

40-32-113. Extension of time. (Repealed)

Source: L. 57: p. 607, § 6. CRS 53: § 116-13-13. C.R.S. 1963: § 116-13-13. L. 2000: Entire section repealed, p. 219, § 11, effective March 29.

ARTICLE 33

Damages to Employees

40-33-101.	Damages for injury of employee.	40-33-102.	Contributory negligence no bar.
------------	---------------------------------	------------	---------------------------------

40-33-103.	Employee does not assume risks.	40-33-107.	from liability void. Definitions.
40-33-104.	Jury question.	40-33-108.	Right of action survives.
40-33-105.	Presumptive evidence.	40-33-109.	Right of action limited.
40-33-106.	Attempts to exempt carrier		

40-33-101. Damages for injury of employee. Every common carrier by railroad in the state of Colorado shall be liable in damages to any person suffering injury while he is employed by such carrier in or about the transporting or handling of any freight, property, passengers, engine, locomotive, or other vehicle upon the tracks of such carrier, or in case of the death of such employee, to his personal representative for the benefit of the surviving widow, or husband, children, parents, or dependents of such employee, for such injury or death resulting in whole or in part from the negligence of any of the officers, agents, or employees of such employer, or by reason of any defect or insufficiency due to the employer's negligence.

Source: L. 37: p. 512, § 1. CSA: C. 139, § 87(1). CRS 53: § 116-14-1. C.R.S. 1963: § 116-14-1.

ANNOTATION

Federal railroad administration order does not preempt state law negligence claims based on the lack of walkways on railroad bridges. Kohn v. Burlington N. & Santa Fe R.R., 77 P.3d 809 (Colo. App. 2003).

40-33-102. Contributory negligence no bar. In all actions brought against any such common carrier under or by virtue of any of the provisions of this article to recover damages for personal injury to the employee, or where such injuries have resulted in his death, the fact that the employee may have been guilty of contributory negligence shall not bar a recovery, but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to such employee; but no such employee who may be injured or killed shall be held to have been guilty of contributory negligence in any case where the violation by such employer of any state or federal statute enacted for the safety of employees contributed to the injury or death of such employee.

Source: L. 37: p. 513, § 2. CSA: C. 139, § 87(2). CRS 53: § 116-14-2. C.R.S. 1963: § 116-14-2.

40-33-103. Employee does not assume risks. In any action brought against any common carrier under or by virtue of any of the provisions of this article to recover damages for injuries to, or the death of, any of its employees, such employee shall not be held to have assumed the risks of his employment in any case where such injury or death resulted in whole or in part from the negligence of any of the officers, agents, or employees of such carrier, or by reason of any defect or insufficiency, due to its negligence, in its cars, engines, appliances, machinery, track, roadbed, works, boats, wharves, or other equipment.

Source: L. 37: p. 513, § 3. CSA: C. 139, § 87(3). CRS 53: § 116-14-3. C.R.S. 1963: § 116-14-3.

40-33-104. Jury question. In any action brought against any such common carrier under or by virtue of any of the provisions of this article, to recover damages for injury to, or the death of, any of its employees, the question as to whether the negligence or violation of law claimed to have caused or contributed to the injury or death of such employee did in substance cause or contribute to such injury or death, and the question as to whether such negligence or violation of law was the proximate cause of such injury or death shall, in all cases, be for the determination of the jury.

Source: L. 37: p. 513, § 4. CSA: C. 139, § 87(4). CRS 53: § 116-14-4. C.R.S. 1963: § 116-14-4.

40-33-105. Presumptive evidence. In all actions brought against any such common carrier under or by virtue of any of the provisions of this article to recover damages for personal injury to the employee, or where such injuries have resulted in his death, the fact of any such injury or death occurring to such employee and arising out of and in the course of his employment shall be presumptive evidence of the want of reasonable skill and care on the part of such carrier and its agents, servants, and employees in reference to such injury or death unless and until rebutted.

Source: L. 37: p. 514, § 5. CSA: C. 139, § 87(5). CRS 53: § 116-14-5. C.R.S. 1963: § 116-14-5.

40-33-106. Attempts to exempt carrier from liability void. Any contract, rule, regulation, or stratagem whatsoever, the purpose or intent of which is to enable any common carrier to exempt itself from any liability created by this article, shall to that extent be void; but in any action brought against any such common carrier under or by virtue of any of the provisions of this article, such carrier may set off therein any sum it has contributed or paid to any insurance, relief benefit, or indemnity that may have been paid to the injured employee, or the person entitled thereto on account of the injury or death for which said action was brought.

Source: L. 37: p. 514, § 6. CSA: C. 139, § 87(6). CRS 53: § 116-14-6. C.R.S. 1963: § 116-14-6.

40-33-107. Definitions. As used in this article, unless the context otherwise requires:

(1) "Common carrier" includes the receiver or other persons or corporations charged with the duty of management and operation of the business of a common carrier.

Source: L. 37: p. 514, § 7. CSA: C. 139, § 87(7). CRS 53: § 116-14-7. C.R.S. 1963: § 116-14-7.

40-33-108. Right of action survives. Any right of action given by this article, to a person suffering injury shall survive to his personal representative, for the benefit of the surviving widow or husband and children of such employee, and, if none, then of such employee's parents; and, if none, then of the next of kin dependent upon such employee, but in such cases there shall be only one recovery for the same injury.

Source: L. 37: p. 514, § 8. CSA: C. 139, § 87(8). CRS 53: § 116-14-8. C.R.S. 1963: § 116-14-8.

40-33-109. Right of action limited. No action shall be maintained under this article, unless commenced within the time period prescribed in section 13-80-102, C.R.S.

Source: L. 37: p. 515, § 9. CSA: C. 139, § 87(9). CRS 53: § 116-14-9. C.R.S. 1963: § 116-14-9. L. 86: Entire section amended, p. 705, § 19, effective July 1.

GEO THERMAL HEAT**ARTICLE 40****Geothermal Heat Suppliers**

Cross references: For the "Colorado Geothermal Resources Act", see article 90.5 of title 37.

40-40-101.	Short title.	40-40-105.	tions.
40-40-102.	Legislative declaration.	40-40-106.	Operating permits.
40-40-103.	Definitions.		Continuing review.
40-40-104.	Public utility status - excep-		

40-40-101. Short title. This article shall be known and may be cited as the "Geothermal Heat Suppliers Act".

Source: L. 83: Entire article added, p. 1422, § 2, effective June 10.

40-40-102. Legislative declaration. The general assembly hereby declares that geothermal heat is a valuable, indigenous resource, the development of which will enhance local economies, and that it is in the public interest of the state to promote the development of geothermal heat supply systems. Therefore, it is the policy of this state to remove the barriers to such development which might result from the imposition of comprehensive regulation by the public utilities commission.

Source: L. 83: Entire article added, p. 1423, § 2, effective June 10.

40-40-103. Definitions. As used in this article, unless the context otherwise requires:

- (1) "Commission" means the public utilities commission of the state of Colorado.
- (2) "Geothermal heat supplier" means any person who supplies geothermally heated groundwater or other substances to the public or other customers for industrial process heat, commercial use, space heating, or other purposes. The term includes systems which enhance the thermal content of the substance supplied through the use of heat pumps, solar assistance, or other means.

Source: L. 83: Entire article added, p. 1423, § 2, effective June 10.

40-40-104. Public utility status - exceptions. (1) Geothermal heat suppliers are found to be affected with the public interest and subject to the limited jurisdiction and regulation of the commission as described in this article only.

(2) Geothermal heat suppliers which are selling at wholesale to other entities which are reselling the heat or converting it to electricity are exempt from the provisions of this article and any other provisions which might subject such geothermal heat suppliers to the jurisdiction of the commission.

(3) Municipal and county geothermal heat suppliers acting alone, together, or in concert with private parties are exempt from the provisions of this article and any other provisions which might subject such entities to the jurisdiction of the commission, except as to service provided outside of their boundaries.

Source: L. 83: Entire article added, p. 1423, § 2, effective June 10.

40-40-105. Operating permits. (1) The commission shall establish a system of operating permits for geothermal heat suppliers. Before commencing construction of distribution facilities, a geothermal heat supplier must obtain an operating permit from the commission. An operating permit:

- (a) May not be denied because the area which the applicant proposes to serve is already being served by a gas or electric utility;
- (b) May not convey an exclusive right to supply geothermal heat in the area which the applicant proposes to serve;
- (c) Shall describe the area the applicant intends to serve and the nature of such service;
- (d) Shall require the applicant to enter into a contract with each customer. The contract, of which only the form and scope are subject to commission review, must specify, at least:
 - (I) The period of time during which service will be provided;
 - (II) The rates or the method for determining rates to be charged during the term of the contract, as negotiated by the parties and not subject to commission approval;
 - (III) That the geothermal heat supplier will submit to the complaint procedures contained in section 40-6-108.
- (2) Before issuing an operating permit, the commission must find that:
 - (a) The applicant is fit, willing, and able to provide the proposed services; and
 - (b) The applicant has made an adequate showing that the geothermal heat supply and distribution system appears reasonably capable of delivering the proposed services.

Source: L. 83: Entire article added, p. 1423, § 2, effective June 10.

40-40-106. Continuing review. The commission has continuing authority over geothermal heat suppliers to enforce the provisions of this article and to ensure that a geothermal heat supplier adheres to the conditions of its operating permit.

Source: L. 83: Entire article added, p. 1424, § 2, effective June 10.

TITLE 41

**AERONAUTICS: AIRCRAFT AND
AIRPORTS**

1954

DEPARTMENT OF AGRICULTURE
REPORT

TITLE 41

AERONAUTICS: AIRCRAFT AND AIRPORTS

AIRCRAFT

- Art. 1. Aeronautics Act of 1937, 41-1-101 to 41-1-108.
Art. 2. Operating an Aircraft under the Influence of Alcohol or Drugs, 41-2-101 and 41-2-102.

AIRPORTS

Generally

- Art. 3. Public Airport Authority Law, 41-3-101 to 41-3-108.
Art. 4. Airports, 41-4-101 to 41-4-205.

Airport Revenue Bonds

- Art. 5. Airport Revenue Bonds - County, 41-5-101 to 41-5-109.

AEROSPACE

- Art. 6. Aerospace, 41-6-101.

AIRCRAFT

ARTICLE 1

Aeronautics Act of 1937

41-1-101.	Short title.	41-1-105.	Display of license.
41-1-102.	Interpretation.	41-1-106.	Sovereignty in space in state.
41-1-103.	Navigation of aircraft.	41-1-107.	Ownership of space.
41-1-104.	License for navigation.	41-1-108.	Penalty for violation.

41-1-101. Short title. This article shall be known and may be cited as the "Aeronautics Act of 1937".

Source: L. 37: p. 250, § 1. CSA: C. 17, § 9. CRS 53: § 5-1-1. C.R.S. 1963: § 5-1-1.

Cross references: For use of an aircraft in hunting wildlife, see § 33-6-124; for the establishment of the Colorado division of civil air patrol within the department of military affairs, see § 28-1-101.

41-1-102. Interpretation. This article shall be so interpreted and construed as to effect its general purpose and to make uniform the law of those states which enact it and to harmonize, as far as possible, with federal laws and regulations on the subject of aeronautics.

Source: L. 37: p. 254, § 13. CSA: C. 17, § 21. CRS 53: § 5-1-8. C.R.S. 1963: § 5-1-8.

41-1-103. Navigation of aircraft. The public safety requiring and the advantages of uniform regulation making it desirable in the interest of aeronautical progress that aircraft operating within this state should conform with respect to design, construction, and

airworthiness to the standards prescribed by the United States government with respect to navigation of aircraft subject to its jurisdiction, it is unlawful for any person to navigate an aircraft within the state unless it is licensed and registered by the department of commerce of the United States in the manner prescribed by the lawful rules and regulations of the United States government then in force.

Source: L. 37: p. 251, § 3. CSA: C. 17, § 11. CRS 53: § 5-1-2. C.R.S. 1963: § 5-1-2.

41-1-104. License for navigation. The public safety requiring and the advantages of uniform regulations making it desirable in the interest of aeronautical progress that a person engaging within this state in navigating aircraft designated in section 41-1-103 in any form of navigation for which license to operate such aircraft would be required by the United States government shall have the qualifications necessary for obtaining and holding the class of license required by the United States government. It is unlawful for any person to engage in operating such aircraft within this state in any form of navigation unless he has such a license.

Source: L. 37: p. 251, § 4. CSA: C. 17, § 12. CRS 53: § 5-1-3. C.R.S. 1963: § 5-1-3.

41-1-105. Display of license. The certificate of the license shall be kept in the personal possession of the licensee when he is operating aircraft within this state, and must be presented for inspection upon the demand of any passenger, any official of the United States department of commerce, any peace officer of this state, or any official, manager, or person in charge of any airport or landing field in this state upon which he lands.

Source: L. 37: p. 251, § 5. CSA: C. 17, § 13. CRS 53: § 5-1-4. C.R.S. 1963: § 5-1-4.

41-1-106. Sovereignty in space in state. Sovereignty in the space above the lands and waters of this state is declared to rest in the state, except where assumed by United States law.

Source: L. 37: p. 251, § 6. CSA: C. 17, § 14. CRS 53: § 5-1-5. C.R.S. 1963: § 5-1-5.

ANNOTATION

Law reviews. For article, "From the Floor of Hell to the Ceiling of Heaven", see 16 Dicta 125 (1939).

41-1-107. Ownership of space. The ownership of space above the lands and waters of this state is declared to be vested in the several owners of the surface beneath, subject to the right of flight of aircraft.

Source: L. 37: p. 251, § 7. CSA: C. 17, § 15. CRS 53: § 5-1-6. C.R.S. 1963: § 5-1-6.

Cross references: For estates above the surface, see article 32 of title 38.

ANNOTATION

Law reviews. For article, "From the Floor of Hell to the Ceiling of Heaven", see 16 Dicta 125 (1939). For comment, "People v. Emmert, 198 Colo. 137, 597 P.2d 1025 (1979): A Step Backward for Recreational Water Use in Colorado", see 52 U. Colo. L. Rev. 247 (1981).

Landowner can exclude public from waters of nonnavigable stream crossing his lands. People v. Emmert, 198 Colo. 137, 597 P.2d 1025 (1979).

"Breaking the close" deemed trespass. Whoever "breaks the close"—intrudes upon the space above the surface of the land—without the permission of the owner, whether it be for fish-

ing or for other recreational purposes, such as floating, commits a trespass. People v. Emmert, 198 Colo. 237, 597 P.2d 1025 (1979).

Owner of stream bed in exclusive control of everything above. The ownership of the bed of a nonnavigable stream vests in the owner the exclusive right of control of everything above the stream bed, subject only to constitutional and statutory limitations, restrictions and regulations. People v. Emmert, 198 Colo. 137, 597 P.2d 1025 (1979).

Applied in Thompson v. City and County of Denver, 958 P.2d 525 (Colo. App. 1998).

41-1-108. Penalty for violation. Any person who violates any provision of this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.

Source: L. 37: p. 251, § 12. CSA: C. 17, § 20. CRS 53: § 5-1-7. C.R.S. 1963: § 5-1-7.

ARTICLE 2

Operating an Aircraft under the
Influence of Alcohol or Drugs

Editor's note: This article was numbered as article 3 of chapter 5, C.R.S. 1963. This article was repealed in 1989 and was subsequently recreated and reenacted in 1990, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1989, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

41-2-101. Definitions.

41-2-102.

Operating an aircraft under the influence - operating an aircraft with excessive alcohol content - tests - penalties - useful public service program.

41-2-101. Definitions. As used in this article, unless the context otherwise requires:

(1) "Aircraft" means any vehicle used or designed for carrying any person, persons, or freight and used or designed for aviation or flight in the air in control of a crew member, whether it is or is not a certificated vehicle under the rules of the federal aviation administration, and the federal department of transportation, or its successor.

(2) "Controls" means the wheel, yoke, stick, cyclic, collective, throttle, mixture, propeller, lever, switch, gage, circuit breaker, doors, emergency exits, or any other thing that pertains to the safe operation of an aircraft.

(3) "Crewmember" means any person assigned to perform any duty in an aircraft during flight time.

(4) "Flight time" means any time from the moment an aircraft is occupied and in control.

(5) "Operating an aircraft" means being in actual physical control or having immediate access to the controls of an aircraft, or being involved in the safe operation of any part of an aircraft as a crewmember.

Source: L. 90: Entire article RC&RE, p. 1769, § 1, effective July 1.

41-2-102. Operating an aircraft under the influence - operating an aircraft with excessive alcohol content - tests - penalties - useful public service program. (1) (a) It is a misdemeanor for any person who is under the influence of alcohol or one or more drugs, or a combination of both alcohol and one or more drugs, to operate any aircraft in this state.

(b) It is a misdemeanor for any person who is an habitual user of any controlled substance, as defined in section 18-18-102 (5), C.R.S., to operate any aircraft in this state.

(c) For the purposes of this subsection (1), "one or more drugs" shall mean all substances defined as a drug in section 27-80-203 (13), C.R.S., and all controlled substances, as defined in section 18-18-102 (5), C.R.S.

(d) The fact that any person charged with a violation of this subsection (1) is or has been entitled to use one or more drugs under the laws of this state shall not constitute a defense against any charge of violating this subsection (1).

(e) "Operating an aircraft under the influence" means operating an aircraft when a person has consumed alcohol or one or more drugs, or a combination of alcohol and one or more drugs, which alcohol alone, or one or more drugs alone, or alcohol combined with one or more drugs affects him to a degree that he is substantially incapable, either mentally or physically, or both mentally and physically, to exercise clear judgment, sufficient physical control, or due care in the safe operation of an aircraft.

(f) Pursuant to section 16-2-106, C.R.S., in charging a violation of paragraph (a) of this subsection (1), it shall be sufficient to describe the offense charged as "operated an aircraft under the influence of alcohol or drugs or both".

(2) (a) It is a misdemeanor for any person to operate any aircraft in this state when the amount of alcohol in such person's blood, as shown by analysis of the person's blood or breath, is 0.04 or more grams of alcohol per hundred milliliters of blood or 0.04 or more grams of alcohol per two hundred ten liters of breath at the time of operating an aircraft or within two hours after such operation. During a trial, if the state's evidence raises the issue, or if a defendant presents some credible evidence, that he consumed alcohol between the time that he stopped operating an aircraft and the time that testing occurred, such issue shall be an affirmative defense, and the prosecution must establish beyond a reasonable doubt that the minimum 0.04 blood or breath alcohol content required in this paragraph (a) was reached as a result of alcohol consumed by the defendant before he stopped operating an aircraft.

(b) In any prosecution for a violation of this subsection (2), the defendant shall be entitled to offer direct and circumstantial evidence to show that there is a disparity between what the tests show and other facts so that the trier of fact could infer that the tests were in some way defective or inaccurate. Such evidence may include testimony of nonexpert witnesses relating to the absence of any or all of the common symptoms or signs of intoxication for the purpose of impeachment of the accuracy of the analysis of the person's blood or breath.

(c) Pursuant to section 16-2-106, C.R.S., in charging a violation of this subsection (2), it shall be sufficient to describe the offense charged as "operated an aircraft with excessive alcohol content".

(3) Notwithstanding the provisions of section 18-1-408, C.R.S., during a trial of any person accused of violating subsection (1) and subsection (2) of this section, the court shall not require the prosecution to elect between the two violations. The court or a jury may consider and convict the person of a violation of either subsection (1) or subsection (2), or both subsection (1) and subsection (2) of this section. If the person is convicted of more than one violation, the sentences imposed shall run concurrently.

(4) (a) In any prosecution for a violation of subsection (1) of this section, the amount of alcohol in the defendant's blood or breath at the time of the commission of the alleged offense or within a reasonable time thereafter, as shown by analysis of the defendant's blood or breath, shall give rise to the presumption that the defendant was under the influence of alcohol if:

(I) There was at such time 0.04 or more grams of alcohol per one hundred milliliters of blood as shown by analysis of such person's blood; or

(II) There was at such time 0.04 or more grams of alcohol per two hundred ten liters of breath as shown by analysis of such person's breath.

(b) The limitations of this subsection (4) shall not be construed as limiting the introduction, reception, or consideration of any other competent evidence bearing upon the question of whether or not the defendant was under the influence of alcohol or whether or not his ability to operate an aircraft was impaired by the consumption of alcohol.

(5) Following the lawful contact with a person who has been operating an aircraft, and when a law enforcement officer reasonably suspects that a person was operating an aircraft while under the influence of alcohol, such law enforcement officer may conduct a preliminary screening test using a device approved by the executive director of the department of public health and environment after first advising the operator that the operator may either refuse or agree to provide a sample of the operator's breath for such preliminary test. The results of this preliminary screening test may be used by a law enforcement officer in determining whether probable cause exists to believe such person was operating an aircraft in violation of subsection (1) or (2) of this section and whether to administer a test pursuant to paragraph (a) of subsection (6) of this section. Neither the results of such preliminary screening test nor the fact that the person refused such test shall be used in any court action except in a hearing outside of the presence of a jury, when such hearing is held to determine if a law enforcement officer had probable cause to believe that the operator committed a violation of subsection (1) or (2) of this section. The results of such preliminary screening test shall be made available to the operator or his attorney on request. The preliminary screening test shall not substitute for or qualify as the test or tests required by paragraph (a) of subsection (6) of this section.

(6) (a) (I) On and after July 1, 1990, any person who operates an aircraft anywhere in this state shall be deemed to have expressed his consent to the provisions of this paragraph (a).

(II) Any person who operates an aircraft anywhere in this state shall be required to take and complete, and to cooperate in the taking and completing of, any test or tests of his breath or blood for the purpose of determining the alcoholic content of his blood or breath when so requested and directed by a law enforcement officer having probable cause to believe that the person was operating an aircraft in violation of subsection (1) or (2) of this section. Except as otherwise provided in this section, if such person requests that said test be a blood test, then the test shall be of his blood; but, if such person requests that a specimen of his blood not be drawn, then a specimen of his breath shall be obtained and tested. If such person elects either a blood test or a breath test, such person shall not be permitted to change such election, and, if such person fails to take and complete, and to cooperate in the completing of, the test elected, such failure shall be deemed to be a refusal to submit to testing. If such person is unable to take, or to complete, or to cooperate in the completing of a breath test because of injuries, illness, disease, physical infirmity, or physical incapacity, or if such person is receiving medical treatment at a location at which a breath testing instrument certified by the department of public health and environment is not available, the test shall be of such person's blood.

(III) Any person who operates an aircraft anywhere in this state shall be required to submit to and to complete, and to cooperate in the completing of, a test or tests of his blood, saliva, and urine for the purpose of determining the drug content within his system when so requested and directed by a law enforcement officer having probable cause to believe that the person was operating an aircraft in violation of subsection (1) of this section and when it is reasonable to require such testing of blood, saliva, and urine to determine whether such person was under the influence of, or impaired by, one or more drugs, or one or more controlled substances, or a combination of both alcohol and one or more drugs, or a combination of both alcohol and one or more controlled substances.

(IV) Any person who is required to take and to complete, and to cooperate in the completing of, any test or tests shall cooperate with the person authorized to obtain specimens of his blood, breath, saliva, or urine, including the signing of any release or consent forms required by any person, hospital, clinic, or association authorized to obtain such specimens. If such person does not cooperate with the person, hospital, clinic, or association authorized to obtain such specimens, including the signing of any release or

consent forms, such noncooperation shall be considered a refusal to submit to testing. No law enforcement officer shall physically restrain any person for the purpose of obtaining a specimen of his blood, breath, saliva, or urine for testing except when the officer has probable cause to believe that the person has committed a violation of section 18-3-105, 18-3-106, 18-3-204, 18-3-205, or 18-3-208, C.R.S., and the person is refusing to take or to complete, or to cooperate in the completing of, any test or tests, then, in such event, the law enforcement officer may require a blood test. Evidence acquired through such involuntary blood test shall be admissible in any prosecution for a violation of subsection (1) or (2) of this section and for a violation of section 18-3-105 or 18-3-204, C.R.S.

(b) (I) The tests shall be administered at the direction of a law enforcement officer having probable cause to believe that the person had been operating an aircraft in violation of subsection (1) or (2) of this section and in accordance with rules and regulations prescribed by the state board of health concerning the health of the person being tested and the accuracy of such testing. Strict compliance with such rules and regulations shall not be a prerequisite to the admissibility of test results at trial unless the court finds that the extent of noncompliance with a board of health rule has so impaired the validity and reliability of the testing method and the test results as to render the evidence inadmissible. In all other circumstances, failure to strictly comply with such rules and regulations shall only be considered in the weight to be given to the test results and not to the admissibility of such test results. It shall not be a prerequisite to the admissibility of test results at trial that the prosecution present testimony concerning the composition of any kit used to obtain blood, urine, saliva, or breath specimens. A sufficient evidentiary foundation concerning the compliance of such kits with the rules and regulations of the department of public health and environment shall be established by the introduction of a copy of the manufacturer's or supplier's certificate of compliance with such rules and regulations if such certificate specifies the contents, sterility, chemical makeup, and amounts of chemicals contained in such kit.

(II) No person except a physician, a registered nurse, an emergency medical service provider, as defined in part 1 of article 3.5 of title 25, C.R.S., and as certified in part 2 of article 3.5 of title 25, C.R.S., or a person whose normal duties include withdrawing blood samples under the supervision of a physician or registered nurse shall withdraw blood to determine the alcoholic or drug content of the blood for purposes of this section. In a trial for a violation of subsection (1) or (2) of this section, the testimony of a law enforcement officer that he or she witnessed the taking of a blood specimen by a person who he or she reasonably believed was authorized to withdraw a blood specimen is sufficient evidence that the person was authorized, and testimony from the person who obtained the blood specimens concerning the person's authorization to obtain blood specimens is not a prerequisite to the admissibility of test results concerning the blood specimen obtained. No civil liability attaches to a person authorized to obtain blood, breath, saliva, or urine specimens or to a hospital, clinic, or association in or for which the specimens are obtained as provided in this subsection (6) as a result of the act of obtaining the specimens from any person submitting thereto if the specimens were obtained according to the rules and regulations of the state board of health; except that this provision shall not relieve the person from liability for negligence in the obtaining of any specimen sample.

(c) Any person who is dead or unconscious shall be tested to determine the alcohol or drug content of his blood or any drug content within his system as provided in this subsection (6). If a test cannot be administered to a person who is unconscious, hospitalized, or undergoing medical treatment because the test would endanger such person's life or health, the law enforcement agency shall be allowed to test any blood, urine, or saliva which was obtained and not utilized by a health care provider and shall have access to that portion of the analysis and results of any tests administered by such provider which shows the alcohol or drug content of the person's blood, urine, or saliva or any drug content within his system. Such test results shall not be considered privileged communications, and the provisions of section 13-90-107, C.R.S., relating to the physician-patient privilege shall not apply. Any person who is dead, in addition to the tests prescribed, shall also have his blood checked for carbon monoxide content and for the presence of drugs, as prescribed by the

department of public health and environment. Such information obtained shall be made a part of the accident report.

(d) If a person refuses to take or to complete, or to cooperate with the completing of, any test or tests as provided in this subsection (6) and such person subsequently stands trial for a violation of subsection (1) of this section, the refusal to take or to complete, or to cooperate with the completing of, any test or tests shall be admissible into evidence at the trial, and a person may not claim the privilege against self-incrimination with regard to admission of refusal to take or to complete, or to cooperate with the completing of, any test or tests.

(7) (a) (I) Every person who is convicted of a violation of subsection (1) or subsection (2) of this section shall be punished by imprisonment in the county jail for not less than five days nor more than one year, and, in addition, the court may impose a fine of not less than three hundred dollars nor more than one thousand dollars. Except as provided in subparagraph (II) of paragraph (d) of this subsection (7), the minimum period of imprisonment provided for such violation shall be mandatory. In addition to any other penalty which is imposed, every person who is convicted of a violation to which this subparagraph (I) applies shall perform not less than forty-eight hours nor more than ninety-six hours of useful public service. The performance of the minimum period of service shall be mandatory, and the court shall have no discretion to suspend the mandatory minimum period of performance of such service.

(II) Upon a conviction of a violation of subsection (1) or subsection (2) of this section, which violation occurred within five years of the date of a previous violation, for which there has been a conviction, of subsection (1) or (2) of this section, the offender shall be punished by imprisonment in the county jail for not less than ninety days nor more than one year, and, in addition, the court may impose a fine of not less than five hundred dollars nor more than one thousand five hundred dollars. The minimum period of imprisonment as provided for such violation shall be mandatory, but the court may suspend up to eighty-three days of the period of imprisonment if the offender complies with the provisions of subparagraph (I) of paragraph (d) of this subsection (7). In addition to any other penalty which is imposed, every person who is convicted of a violation to which this subparagraph (II) applies shall perform not less than sixty hours nor more than one hundred twenty hours of useful public service. The performance of the minimum period of service shall be mandatory, and the court shall have no discretion to suspend the mandatory minimum period of performance of such service.

(b) The provisions of this subsection (7) relating to the performance of useful public service are also applicable to any defendant who receives a deferred prosecution in accordance with section 18-1.3-101, C.R.S., or who receives a deferred sentence in accordance with section 18-1.3-102, C.R.S., and the completion of any stipulated amount of useful public service hours to be completed by the defendant shall be ordered by the court in accordance with the conditions of such deferred prosecution or deferred sentence as stipulated to by the prosecution and the defendant.

(c) For the purposes of paragraph (a) of this subsection (7), a person shall be deemed to have a previous conviction of subsection (1) or (2) of this section if such person has been convicted of an act under the laws of any other state, the United States, or any territory subject to the jurisdiction of the United States which, if committed within this state, would be a violation of subsection (1) or (2) of this section.

(d) (I) Upon conviction of a violation of subsection (1) or (2) of this section, the court shall sentence the defendant in accordance with the provisions of paragraph (a) of this subsection (7). The court shall consider the alcohol and drug evaluation required pursuant to subsection (8) of this section prior to sentencing; except that the court may proceed to immediate sentencing without considering such alcohol and drug evaluation if the defendant has no prior or pending charges under this section and neither the defendant nor the prosecuting attorney objects. If the court proceeds to immediate sentencing, without considering such alcohol and drug evaluation, such alcohol and drug evaluation shall be conducted after sentencing, and the court shall order the defendant to complete the education and treatment program recommended in such alcohol and drug evaluation. If the defendant disagrees with the education and treatment program recommended in such

alcohol and drug evaluation, he may request the court to hold a hearing to determine which education and treatment program should be completed by the defendant.

(II) For sentencing purposes concerning convictions for second and subsequent offenses, prima facie proof of a defendant's previous convictions shall be established when the prosecuting attorney and the defendant stipulate to the existence of the prior conviction or convictions or the prosecuting attorney presents to the court a copy of the court record of such conviction in this state or some other state. The court shall not proceed to immediate sentencing when there is not a stipulation to prior convictions or if the prosecution requests an opportunity to obtain a conviction record. The prosecuting attorney shall not be required to plead or prove any previous convictions at trial, and sentencing concerning convictions for second and subsequent offenses shall be a matter to be determined by the court at sentencing.

(e) The sentence of any person subject to the provisions of subparagraph (II) of paragraph (a) of this subsection (7) may be suspended to the extent provided for in said subparagraph (II) if the offender receives a presentence alcohol and drug evaluation; based on that evaluation, satisfactorily completes an appropriate level I or level II alcohol and drug education or treatment program; and abstains from the use of alcohol for a period of one year from the date of sentencing. Such abstinence shall be monitored by the treatment facility by the administration of disulfiram or by any other means that the director of the treatment facility deems appropriate. If, at any time during the one-year period, the offender does not satisfactorily comply with the conditions of the suspension, that sentence shall be reimposed, and the offender shall spend that portion of his sentence which was suspended in the county jail.

(f) In addition to the penalties prescribed in this subsection (7), persons convicted of violations of subsection (1) or (2) of this section are subject to the costs imposed by section 24-4.1-119 (1) (c), C.R.S., relating to the crime victim compensation fund.

(g) In addition to any other penalty provided by law, the court may sentence a defendant who is convicted pursuant to this section to a period of probation for purposes of treatment not to exceed two years. As a condition of probation, the defendant shall be required to make restitution in accordance with the provisions of section 18-1.3-205, C.R.S.

(h) The provisions of section 42-4-1301.4, C.R.S., shall apply to this article.

(8) The unit in the department of human services that administers behavioral health programs and services, including those related to mental health and substance abuse, shall provide presentence alcohol and drug evaluations on all persons convicted of a violation of subsection (1) or (2) of this section, in the same manner as described in section 42-4-1301.3, C.R.S.

(9) Upon a plea of guilty, or a verdict of guilty by the court or a jury, to any offense specified in subsection (1) or (2) of this section, the court shall order the defendant to immediately report to the sheriff's department in the county where the defendant was convicted, at which time the defendant's fingerprints and photographs shall be taken and returned to the court, which fingerprints and photographs shall become a part of the court's official documents and records pertaining to the defendant's conviction and the defendant's identification in association with such conviction. On any trial for a violation of any of the offenses specified in subsection (1) or (2) of this section, a duly authenticated copy of the record of former convictions and judgments of any court of record for any of said crimes against the party indicted or informed against shall be prima facie evidence of such convictions and may be used in evidence against such party. Identification photographs and fingerprints that are part of the record of such former convictions and judgments of any court of record or that are part of the record at the place of such party's incarceration after sentencing for any of such former convictions and judgments shall be prima facie evidence of the identity of such party and may be used in evidence against him. Any person who fails to immediately comply with the court's order to report to the sheriff's department, to furnish fingerprints, or to have his photographs taken may be held in contempt of court.

(10) As used in this section, "convicted" includes a plea of no contest accepted by the court.

Source: L. 90: Entire article RC&RE, p. 1770, § 1, effective July 1. L. 93: (5) and (8) amended, p. 1124, § 44, effective July 1, 1994. L. 94: (6)(a)(II), (6)(b)(I), and (6)(c)

amended, p. 2806, § 597, effective July 1; (7)(h) and (8) amended, p. 2571, § 97, effective January 1, 1995. **L. 2002:** (7)(h) and (8) amended, p. 1921, § 14, effective July 1; (7)(b) and (7)(g) amended, p. 1559, § 361, effective October 1. **L. 2008:** (4) amended, p. 1915, § 134, effective August 5. **L. 2011:** (8) amended, (HB11-1303), ch. 264, p. 1177, § 98, effective August 10. **L. 2012:** (1)(b) and (1)(c) amended, (HB 12-1311), ch. 281, p. 1631, § 86, effective July 1; (6)(b)(II) amended, (HB 12-1059), ch 271, p. 1439, § 24, effective July 1.

Cross references: For the legislative declaration contained in the 1993 act amending subsections (5) and (8) of this section, see section 1 of chapter 230, Session Laws of Colorado 1993. For the legislative declaration contained in the 1994 act amending subsection (6)(a)(II), (6)(b)(I), and (6)(c), see section 1 of chapter 345, Session Laws of Colorado 1994. For the legislative declaration contained in the 2002 act amending subsections (7)(b) and (7)(g), see section 1 of chapter 318, Session Laws of Colorado 2002. For the legislative declaration in the 2012 act amending subsection (6)(b)(II), see section 26 of chapter 271, Session Laws of Colorado 2012.

AIRPORTS

Generally

ARTICLE 3

Public Airport Authority Law

Law reviews: For article, "Creation and Regulation of Airport Authorities in Colorado", see 34 Colo. Law. 49 (February 2005).

41-3-101.	Short title.	41-3-106.	Powers of an authority.
41-3-102.	Legislative declaration.	41-3-107.	Legal status of authorities - tax exemption.
41-3-103.	Definitions.	41-3-108.	Legal investments and securities.
41-3-104.	Creation of authorities.		
41-3-105.	Board of commissioners.		

41-3-101. Short title. This article shall be known and may be cited as the "Public Airport Authority Act".

Source: **L. 65:** p. 164, § 1. **C.R.S. 1963:** § 5-5-1.

ANNOTATION

Applied in Walker Field, Pub. Airport Auth. v. Adams, 606 F.2d 290 (10th Cir. 1979).

41-3-102. Legislative declaration. The purpose of this article is to authorize the creation by cities and towns, and counties, and the state of Colorado, through their joint action, and by counties acting by independent action or jointly with the state, of airport authorities, corporate and politic, and constituting political subdivisions of the state of Colorado, for the purpose of acquiring and improving airports, air navigation facilities, and related facilities, and the financing of the cost of such acquisition by the issuance of bonds or other obligations of such authorities payable from the income of any such authorities and otherwise secured to the extent permitted by law without the incurrence of an indebtedness by the state of Colorado, or by any of its political subdivisions, thereby promoting and facilitating transportation by air from or to points located within the state of Colorado, all to the benefit and general welfare of the state of Colorado, its political subdivisions, and the inhabitants thereof.

Source: **L. 65:** p. 164, § 2. **C.R.S. 1963:** § 5-5-2. **L. 69:** pp. 100, 105, §§ 1, 1.

ANNOTATION

It is state's policy to finance and operate airport facilities on self-paying basis. Walker Field, Pub. Airport Auth. v. Adams, 606 F.2d 290 (10th Cir. 1979).

City and county may be forced to cosponsor airport program. The secretary of transpor-

tation has the power to negate the state policy to finance and operate airport facilities on a self-paying basis by forcing a city and county to cosponsor an airport authority program. Walker Field, Pub. Airport Auth. v. Adams, 606 F.2d 290 (10th Cir. 1979).

41-3-103. Definitions. As used in this article, unless the context otherwise requires:

(1) "Air navigation facility" means any facility, other than one owned and operated by the United States, used in, available for use in, or designed for use in aid of air navigation, including any structures, mechanisms, lights, beacons, markers, communicating systems, or other instrumentalities or devices used or useful as an aid, or constituting an advantage or convenience to the safe taking off, navigation, and landing of aircraft, or the safe and efficient operation or maintenance of an airport, and any combination of any or all of such facilities.

(2) "Airport" means any area of land or water which is used, or intended for use, for the landing and takeoff of aircraft, and any appurtenant areas which are used, or intended for use, for airport buildings or other airport facilities or rights-of-way, together with all airport buildings and facilities located thereon however financed. Such facilities may also include land and buildings, together with all appurtenances necessary or convenient thereto for the accommodation or convenience of the public, whether or not the members of the public so accommodated are directly or indirectly engaged in transportation by air, including, but not limited to, parking, dining, recreational, and hotel facilities.

(3) "Airport hazard" means any structure, object of natural growth, or use of land which obstructs the airspace required for the flight of aircraft in landing or taking off at an airport, or is otherwise hazardous to such landing or taking off of aircraft.

(4) "Authority" means a body corporate and politic and constituting a political subdivision of the state created for airport purposes under the provisions of this article.

(5) "Board", as distinguished from the governing board defined in subsection (11) of this section, means the board of commissioners of any airport authority created pursuant to the provisions of this article.

(6) "Bonds" means any bonds, notes, interim certificates, debentures, or similar obligations issued by an authority pursuant to this article.

(7) "Clerk" means the custodian of the official records of a municipality or county.

(8) "Combination" means any combination comprised of two or more municipalities, two or more counties, or any combination of one or more municipalities and one or more counties.

(9) "County" means any county organized under the laws of the state of Colorado and includes public entities which are both cities and counties.

(10) "Federal government" means the United States, or any of its officers, agencies, boards, or commissions.

(11) "Governing board" means the officials authorized by law to exercise by ordinance or resolution the lawmaking powers of a municipality or county.

(12) "Income of the authority" means all revenues derived directly or indirectly by the authority from the use and operation of the airport, including, but not limited to, interest on investments and all rentals, fees, rates, or other charges for the use of the airport, or for any services rendered by the authority in the operation thereof, but excluding, if necessary or appropriate, money received as grants or gifts from the federal government or the state or other sources, the use of which is limited by the grantor or donor to the construction of capital improvements to an airport.

(13) "Municipality" means any city or town, whether incorporated under the general laws of the state of Colorado, article XX of the state constitution, or acts of the council and house of representatives of the territory of Colorado, but does not include local entities which are both cities and counties.

(14) "Person" means any individual, firm, partnership, corporation, company, association, joint-stock association, or body politic; and the term includes any trustee, receiver, assignee, or other similar representative thereof.

(15) "Resolution" means a resolution of the board of county commissioners of a county or ordinance of a city, city and county, or town, whichever form of action is necessary or appropriate under the laws of the state of Colorado, or under the charter of a city, or city and county, incorporated pursuant to article XX of the state constitution.

(16) "State" means the state of Colorado or any of its agencies.

Source: L. 65: p. 164, § 3. C.R.S. 1963: § 5-5-3. L. 69: pp. 100, 105, §§ 2, 2.

41-3-104. Creation of authorities. (1) Any combination, or any county acting independently, may create an authority which shall be authorized to exercise the functions conferred by the provisions of this article, upon the issuance by the director of the division of local government in the department of local affairs of a certificate reciting that the authority has been duly organized according to the laws of the state of Colorado. Such certificate shall be issued by the director of said division upon the filing with him of a certified copy of the resolution of the county acting independently and, in the case of a combination, of each county or municipality joining therein, duly certified as correct by the clerk of the municipality or county. In the case of a combination, there shall also be filed with the director of said division a joint certificate of the clerks of any county or municipality joining therein, certifying that such counties or municipalities, and listing them, constitute all of the counties or municipalities joining in the formation of the authority. At the time of filing such resolutions, there shall also be filed a designation of the official name of the authority.

(2) Any combination creating an authority may be increased from time to time to include one or more additional counties or municipalities, if each additional municipality or county and the members then included in the authority and the board of commissioners of the authority, respectively, adopt a resolution consenting thereto. Any authority which was created by a county acting independently may be increased from time to time to include one or more additional counties or municipalities, if each additional municipality or county and the county creating the authority and the board of commissioners of the authority, respectively, adopt a resolution consenting thereto. Upon the inclusion of any county or municipality in an authority initially created by a county acting independently, such authority shall be deemed to have been created by a combination for purposes of this article. Upon the inclusion of any county or municipality in the authority so created, either initially or as an additional member later, all rights, contracts, obligations, and property, both real and personal, of such municipality or county used for or in relation to transportation by air shall vest in the authority created pursuant to this section, unless otherwise specifically provided by the resolution including such municipality or county in the authority.

(3) Any combination formed to create an authority may be decreased if each of the members then included therein and the board of the authority consent to the decrease and make provision for the retention or disposition of the assets and liabilities of the county or municipality, as the case may be; but, if the authority has any bonds outstanding, no such decrease shall be effective until at least seventy-five percent of the holders of the outstanding bonds of the authority consent thereto in writing, or unless the board determines that such decrease will not affect adversely the rights of the holders of such outstanding bonds.

(4) A municipality or a county shall not adopt a resolution authorized by this section without a public hearing thereon. Notice shall be given at least ten days prior to the date of the hearing in a newspaper having a general circulation in the municipality or county, as the case may be.

(5) All commissioners of an authority shall be appointed for a term of four years each; except that a vacancy occurring other than by the expiration of term shall be filled for the unexpired term in the same manner as the original appointments.

(6) Any authority created pursuant to the provisions of this article shall cease to exist upon the filing with the director of the division of local government of a certified resolution of each county or municipality composing the authority requesting the termination of such

authority; but adequate provisions shall be made for the payment of the outstanding bonds of the authority.

(7) Notwithstanding any other provision of this article to the contrary, the general assembly may, by law, authorize the governor, on behalf of the state, to join in the creation of any airport authority authorized by this article or to join any existing airport authority created pursuant to this article.

Source: L. 65: p. 166, § 4. C.R.S. 1963: § 5-5-4. L. 69: pp. 101, 105, §§ 3, 3. L. 76: (1) and (6) amended, p. 607, § 34, effective July 1. L. 85: (2) amended, p. 1310, § 1, effective March 10.

Cross references: For publication of legal notices, see article 70 of title 24.

ANNOTATION

Subsection (2) provision is constitutional. Provision in subsection (2) vesting in an airport authority "all rights, contracts, obligations, and property, both real and personal" belonging to a county or municipality included in the authority does not attempt to grant special privileges in contravention of § 11 of art. II, Colo. Const. Enger v. Walker Field, Colo. Pub. Airport Auth., 181 Colo. 253, 508 P.2d 1245 (1973).

The provision in subsection (2) for the vesting in an airport authority "all rights, contracts, obligations, and property, both real and personal", belonging to a city and a county without the approval of the taxpaying electors in the respective political entities did not constitute the taking of property without due process of law, contrary to § 25 of art. II, Colo. Const. Enger v.

Walker Field, Colo. Pub. Airport Auth., 181 Colo. 253, 508 P.2d 1245 (1973).

Provision in subsection (2) vesting in an airport authority "all rights, contracts, obligations, and property, both real and personal" belonging to a county or municipality included in the authority is not vague, indefinite, and uncertain. Enger v. Walker Field, Colo. Pub. Airport Auth., 181 Colo. 253, 508 P.2d 1245 (1973).

Constitutionality of subsection (7) was not relevant to class action challenge of validity of revenue bonds issued by an airport authority. Enger v. Walker Field, Colo. Pub. Airport Auth., 181 Colo. 253, 508 P.2d 1245 (1973).

Applied in Walker Field, Pub. Airport Auth. v. Adams, 606 F.2d 290 (10th Cir. 1979).

41-3-105. Board of commissioners. (1) All powers, privileges, and duties vested in or imposed upon any authority organized pursuant to the provisions of this article shall be exercised and performed by and through the board except as otherwise provided by law; but the exercise of any and all executive, administrative, and ministerial powers may be by said board delegated and redelegated to any of the officers created or by the board acting under this article.

(2) The board of commissioners of an authority created by the formation of a combination shall consist of at least five members, but no more than nine members, representing the counties or municipalities participating in the combination. The authorizing resolution, filed with the director of the division of local government in the department of local affairs, as provided in section 41-3-104 (1), shall contain a provision as to the representation of the counties and municipalities participating in the combination. The members of the board of an authority created by a combination shall be appointed by resolution of the governing boards of the counties or municipalities that are members of the combination, the initial appointments, at the election of such municipality or county, to be made by the authorizing resolution filed with the director of said division. If the county in which the airport is to be located is not a member of the combination, then the member or members, if any, to which such county is entitled shall be appointed by the board of county commissioners of such county. The board created by the independent action of a county shall consist of five members who shall be appointed by the board of county commissioners of the county, and initial appointments to such board, at the election of the board of county commissioners, may be made in the authorizing resolution filed with the director of said division. Board members shall be taxpaying electors, as defined in section 1-1-104 (49), C.R.S., at the time of their appointment, residing in the municipality or county from which appointed. After an authority is organized by the formation of a combination, the inclusion of additional counties or municipalities shall entitle the included municipalities or counties to represen-

tation on the same basis as other counties or municipalities. Each member of the board may receive as compensation for his services a sum not in excess of sixty dollars per year. No member of the board shall receive any compensation as an employee of the authority or otherwise, other than that provided in this section, and no member of the board shall be interested in any contract or transaction with the authority except in his official respective capacity.

(3) The term of each member shall be for four years; except that the terms of the members of the first board shall be adjusted so that the terms of one-half of the members shall expire two years thereafter. At the first meeting of the board of a newly formed authority the commissioners shall determine by lot which members shall serve for two-year terms and which shall serve for four-year terms. At the expiration of the term of any commissioner, a new appointment shall be made by the appropriate governing board, and any member may be appointed to succeed himself.

(4) A change of residence of a member of the board to a place outside the municipality which he represents, or the county from which he is appointed, automatically creates a vacancy on the board as to such municipality or county. Vacancies which may occur on the board through death or resignation of one of the members, or for any other reason, shall be filled in the same manner as provided for the appointment of original members of the board.

(5) The board, in addition to any other powers conferred by this article, has the following powers:

(a) To fix the time and place at which its regular meetings shall be held, which place may be located within any municipality or county forming a part of an authority created by a combination, or within the county independently creating such authority, and shall provide for the calling and holding of special meetings; to organize, adopt bylaws and rules of procedure, and select a chairman and pro tem chairman. Notice of time and place designated for all regular meetings shall be posted in at least three places within each municipality and county forming a part of the authority if created by the formation of a combination, and, in addition, one such notice shall be posted, irrespective of the procedure under which the authority is created, in the county courthouse in the county wherein the airport is located and in the county creating the authority. Such notices shall remain posted and shall be changed in the event that the time or place of such regular meeting is changed. Special meetings may be called by any officer or member of the board by informing the other members of the date, time, and place of such meeting and the purpose for which it is called, and by posting as provided in this paragraph (a) at least three days previous to said meeting. All business of the board shall be conducted only during such regular or special meetings, and all of such meetings shall be open to the public.

(b) To make and pass resolutions and orders not repugnant to the constitution of the United States or the state or other provisions of this article, necessary for the government and management of the affairs of the authority, and the execution of the powers vested in the authority and for carrying into effect the provisions of this article. On all resolutions the rolls shall be called and the ayes and nays recorded. Resolutions and orders may be adopted by viva voce vote, but on demand of any member the roll shall be called.

(c) To record all resolutions, as soon as may be after their passage, in a book kept for that purpose and authenticate them by the signature of the presiding officer of the board and the clerk thereof. Any resolution may at the election of the board be published in a newspaper of general circulation in the county wherein the airport is located within ten days of the date of passage and adoption, and shall become effective, if so provided, upon the date of such publication.

(d) To transact business only if a quorum of sixty percent of the board is present at a regular or special meeting; but all questions involving the inclusion or exclusion of a municipality or county in or from the authority or authorizing any expenditures in excess of ten thousand dollars shall require the affirmative majority vote of the board, and all other questions shall require the affirmative vote of not less than fifty percent of the board;

(e) To fix the location of the principal place of business of the authority and the location of all offices and departments maintained thereunder, the location thereof to be at such place as the board deems best;

(f) To prescribe by resolution a system of business administration; to create any and all necessary offices; to establish and reestablish the powers and duties and compensation of all officers and employees; and to require and fix the amount of all official bonds necessary for the protection of the funds and property of the authority;

(g) To employ clerical, legal, consulting, and engineering assistance and labor, and to delegate and redelegate to such employees the powers conferred by this article, under such conditions and restrictions as shall be fixed by the board to authorize such employees to bind the authority by contract;

(h) To prescribe a method of auditing and allowing or rejecting claims and demands and a method for the letting of contracts on a fair and competitive basis for the construction of works, structures, or equipment or the performance or furnishing of labor, materials, or supplies as required for the carrying out of any of the purposes of this article; but, in cases where the amount involved is fifty thousand dollars or more, the board shall provide for the letting of contracts to the lowest responsible bidder after publication in the official newspaper of notices inviting bids, subject to the right of said board to reject any and all proposals and to readvertise for bids as provided in this section. The procedures above described shall be subject to the approval of the board of county commissioners of any county independently creating an authority under the provisions of this article, and any action on the part of the board to raise or increase revenue from any source whatsoever for the purposes of the authority shall also be subject to such approval. The board shall be bound to carry out any action requested by the board of county commissioners.

(i) To constitute and appoint an official newspaper to be used for the official publications of the authority; but nothing in this section shall prevent the board from directing publication in additional newspapers or other periodicals which public necessity may so require or indicate.

(6) Where the state, pursuant to section 41-3-104 (7), joins in the creation of an airport authority authorized by this article or joins an existing airport authority created pursuant to this article, the state shall be entitled to such number of members of the board of commissioners as may be agreed upon by the creating parties or present parties of the authority and the state, as the case may be, but in no case shall the state be entitled to less than one member of the board of commissioners. The state member or members of the board of commissioners shall be appointed by the governor, with the consent of the senate.

Source: L. 65: p. 168, § 5. C.R.S. 1963: § 5-5-5. L. 69: pp. 102, 106, §§ 4, 5, 4. L. 73: p. 192, § 1. L. 76: (1) and (2) amended, p. 608, § 35, effective July 1. L. 80: (2) amended, p. 417, § 37, effective January 1, 1981. L. 93: (2) amended, p. 1794, § 94, effective June 6. L. 2004: (5)(h) amended, p. 54, § 1, effective August 4.

ANNOTATION

Constitutionality of subsection (6) was not relevant to class action challenge of validity of revenue bonds issued by an airport authority.

Enger v. Walker Field, Colo. Pub. Airport Auth., 181 Colo. 253, 508 P.2d 1245 (1973).

41-3-106. Powers of an authority. (1) An authority has the following powers:

- (a) To have perpetual existence;
- (b) To have and use a corporate seal;
- (c) To sue and be sued, and be a party to suits, actions, and proceedings;
- (d) To enter into contracts and agreements affecting the affairs of the authority, including, but not limited to, contracts with the United States and the state of Colorado;
- (e) To borrow money and to issue bonds payable in whole or in part from the income of the authority and otherwise secured to the extent permitted by law; but, before any money shall be borrowed or any bonds issued, such borrowing or sale shall first be approved by the board of county commissioners of any county independently creating an authority under the provisions of this article. Said bonds shall be authorized by resolution of said board without the necessity of submitting the question of their issuance to the qualified electors of the municipalities or counties constituting members of the authority. Said resolution shall

prescribe the form of said bonds, the manner of their execution, which may be effected by the use of the facsimile signatures of the officers of the authority in accordance with the laws of the state in effect at the time of their execution, shall provide for the terms thereof, including the maximum net effective interest rate for the issue of bonds, and the security for their payment, may authorize the issuance of additional bonds having a lien on a parity with or junior thereto on the income of the authority, provide for the redemption of said bonds prior to their respective maturities with or without premium, and direct that said bonds shall be sold at public or private sale at or below par, but such bonds shall not be sold at a price such that the net effective interest rate of the issue of bonds exceeds the maximum net effective interest rate authorized. The board shall prescribe other details in connection with the issue of bonds. The bonds so authorized shall mature serially over a period not exceeding thirty years and shall bear interest at a net effective interest rate not exceeding the maximum net effective interest rate authorized. Said resolution and bonds may also include such other terms or recitals which in the judgment of the board are necessary or proper to render the same marketable. Nothing in this article shall be construed as authorizing the authority or any county to assess and levy taxes for the payment of said bonds, nor shall said bonds be construed to be an indebtedness of the municipalities or counties constituting members of the authority or of the county independently creating such authority within the meaning of any constitutional, charter, or statutory limitation.

(f) To purchase, trade, exchange, acquire, buy, sell, and otherwise dispose of and encumber real and personal property of the authority and any interest therein, including leases and easements;

(g) To refund any bonds of the authority as the same become due at stated maturities, or as a result of the exercise of the privilege of calling bonds for prior redemption, and to refund any such bonds in advance of such maturities or redemption dates in accordance with the laws of the state then in effect and applicable to municipalities. The terms and conditions of refunding bonds shall be substantially the same as those of an original issue of bonds.

(h) To regulate, when acting singly, or by agreement, when acting jointly with any other municipality or county, the receiving, deposit, and removal and the embarkation of passengers or property to or from the airport; to regulate or prohibit any airport hazard; to exact and require charges, fees, and rentals, together with a lien to enforce the payment; to lease or assign for operation such space or area, appurtenances, appliances, or other conveniences necessary or useful in connection therewith; to own and operate aircraft; to employ pilots; to provide rules and regulations governing the use of such airport and facilities and the use of other property and means of transportation within or over said airport, landing field, and navigation facilities; to perform any duties, necessary or consistent with the regulation of air traffic; to enter into contracts or otherwise cooperate with the United States, the state, or other public or private agencies; and to exercise such powers as may be required or consistent with the promotion of aeronautics and the furtherance of commerce and navigation by air;

(i) To pledge all or a part of the income of the authority to the payment of the bonds authorized to be issued pursuant to the terms of this article and to otherwise secure the payment of said bonds to the extent permitted by law including, but not limited to, a conveyance in trust of any or all of the properties or facilities of the authority as a part of such security;

(j) To have and exercise the power of eminent domain in the manner provided by law for the condemnation of private property for public use and to take any property necessary to exercise the powers in this article granted, either within or without the boundaries of the municipalities or counties constituting members of the authority. In exercising the power of eminent domain, the procedure established and prescribed by articles 1 to 7 of title 38, C.R.S., shall be followed. Nothing in this article shall be construed to limit the power of a county otherwise to acquire property through the exercise of the power of eminent domain under and in accordance with the laws of the state.

(k) To construct and maintain works and establish and maintain facilities, within or without the boundaries of the municipalities or counties constituting members of the authority or within or without the boundaries of the county independently creating an authority pursuant to the provisions of this article, across or along any public street or

highway or in, upon, under, or over any vacant public lands, which public lands are now, or may become, the property of the state; but the authority shall promptly restore any such street or highway to its former state of usefulness as nearly as may be and shall not use the same in such manner as to completely or unnecessarily impair the usefulness thereof;

(l) To invest any surplus money in the treasury of the authority, including such money in any sinking or trust fund established for the purpose of retiring bonds at or prior to maturity not required for the immediate necessities of the authority, in securities meeting the investment requirements established in part 6 of article 75 of title 24, C.R.S. Such investment may be made by direct purchase of any issue of such securities, or part thereof, at the original sale of the same or by the subsequent purchase of such securities. Any securities thus purchased and held may be sold, unless such sale is prohibited by any agreement under which the same have been or shall be deposited and the proceeds thereof reinvested in securities as provided in this paragraph (l). Sales of any securities thus purchased and held shall be made at such time so that the proceeds may be applied to the purposes for which the money with which the securities were originally purchased was placed in the treasury of the authority.

Source: L. 65: p. 171, § 6. C.R.S. 1963: § 5-5-6. L. 69: p. 103, § 6. L. 70: p. 108, § 1. L. 89: (1)(l) amended, p. 1127, § 57, effective July 1.

ANNOTATION

Imposition of user fee by airport authority upon rental car company which is based upon portion of gross revenues of company attributable to customers picked up at airport does not constitute an illegal income tax. *Westrac, Inc. v. Walker Field*, 812 P.2d 714 (Colo. App. 1991).

Distinction between fee and tax based upon nature and function of the charge rather than by its label. Fees charged for use of public facility owned by municipal corporation are not taxes if purpose is to defray expenses for operating and improving facility and if fees are only imposed on users of facility. Taxes are not based on amount of use and the proceeds thereof are used to defray general municipal expenses. *Westrac, Inc. v. Walker Field*, 812 P.2d 714 (Colo. App. 1991).

Since this section does not impose requirement of reasonableness for imposition of fees by airport authorities, such authorities have broad discretion regarding imposition of such fees which is subject only to constitutional and

federal statutory limitations. Absent any express statutory limitations, judicial deference will be given to the sound discretion of airport authority imposing such fees. *Westrac, Inc. v. Walker Field*, 812 P.2d 714 (Colo. App. 1991).

User fee imposed by airport authority upon rental car company which is based upon portion of gross revenues of company attributable to customers picked up at airport is not arbitrary or confiscatory since the fee is rationally related to a legitimate governmental interest in providing airport facilities and since the fee is not prohibitive of an entire industry. *Westrac, Inc. v. Walker Field*, 812 P.2d 714 (Colo. App. 1991).

Authority's ban on scheduled passenger service is a valid exercise of proprietary powers that is not preempted by federal law pursuant to the powers granted to the authority under this section. *Arapahoe County Airport Auth. v. Centennial Express Airlines*, 956 P.2d 587 (Colo. 1998).

41-3-107. Legal status of authorities - tax exemption. (1) An authority created pursuant to this article is hereby declared to be a political subdivision of the state, exercising essential governmental powers for a public purpose. The general assembly, therefore, finds:

(a) That no authority, or county independently creating an authority, shall be required to pay any general ad valorem taxes upon an airport or any facilities connected therewith located within the state nor upon the interest of the authority therein;

(b) That bonds issued under this article and the income therefrom shall be free and exempt from taxation by the state, or any political subdivision of the state, with the exception of transfer, inheritance, and estate taxes.

Source: L. 65: p. 174, § 7. C.R.S. 1963: § 5-5-7.

Cross references: For the taxation of bonds issued by counties pursuant to article 5 of this title, see § 41-5-105.

ANNOTATION

Section constitutional. There is no reason why the property of a political subdivision of the state should not be exempt from taxation under

art. X, § 4, Colo. Const., as “property . . . of the state”. Denver Beechcraft v. Bd. of Assess. Appeals, 681 P.2d 945 (Colo. 1984).

41-3-108. Legal investments and securities. It shall be legal for any bank, trust company, banker, savings bank, or banking institution, any building and loan association, savings and loan association, investment company, and other person carrying on a banking or investment business, any insurance company, insurance association, or other person carrying on an insurance business, and any executor, administrator, trustee, or fiduciary to invest funds or moneys in their custody in any of the bonds authorized to be issued pursuant to the provisions of this article. Public entities, as defined in section 24-75-601 (1), C.R.S., may invest public funds in such bonds only if said bonds satisfy the investment requirements established in part 6 of article 75 of title 24, C.R.S. Such bonds shall be authorized security for public deposit. Nothing in this section shall be construed as relieving any public body or other person of any duty of exercising reasonable care in selecting securities.

Source: L. 65: p. 174, § 8. C.R.S. 1963: § 5-5-8. L. 89: Entire section amended, p. 1132, § 76, effective July 1.

ARTICLE 4

Airports

PART 1		41-4-110.	Previous acts legalized.
COUNTY AIRPORTS		41-4-111.	Federal aid.
		41-4-112.	Additional powers.
		41-4-113.	County airport fund.
41-4-101.	Operation a governmental function.	PART 2	
41-4-102.	Authority to establish.	AIRPORTS - CITIES AND TOWNS	
41-4-103.	Joint action by corporate authority.		
41-4-104.	Acquisition.		
41-4-105.	Authority to incur indebtedness.		
41-4-106.	Operation of airports.	41-4-201.	Power to establish airports.
41-4-107.	Appropriation for airports.	41-4-202.	How lands acquired.
41-4-108.	Removal of airport hazards.	41-4-203.	Power to incur indebtedness and issue bonds.
41-4-109.	Encroachment a nuisance.	41-4-204.	Jurisdiction to regulate use.
		41-4-205.	Funds may be raised by taxation.

PART 1

COUNTY AIRPORTS

41-4-101. Operation a governmental function. The acquisition of any lands for the purpose of establishing airports or other air navigation facilities; the acquisition of airport protection privileges; the acquisition, establishment, construction, enlargement, improvement, maintenance, equipment, and operation of airports and other air navigation facilities; and the exercise of any other powers granted in this part 1 to any county, city and county, city, or town are hereby declared to be public governmental functions, exercised for a public purpose, and matters of public necessity; and such lands and other property, easements, and privileges acquired and used in the manner and for the purposes enumerated in this part 1 are hereby declared to be acquired and used for public purposes and as a matter of public necessity.

Source: L. 45: p. 38, § 1. CSA: C. 45, § 242. CRS 53: § 5-4-1. C.R.S. 1963: § 5-4-1.

ANNOTATION

Operation of airport is governmental function. A city, in voluntarily assuming a power and exercising a function for the benefit of the municipality and extending aid toward the promotion and accommodation of air commerce and travel, did so in its municipal or proprietary capacity as distinguished from a governmental function assigned to it to enforce the general policy of the state in the administration of general laws. However, if the operation of the municipal airport by the city is in keeping with the declared policy of the general assembly to be a governmental function, then the power of the city to act for the purpose of the promotion and convenience of travel by air is further amplified, instead of restricted, by this section. *Rocky Mt. Motor Co. v. Airport Transit Co.*, 124 Colo. 147, 235 P.2d 580 (1951).

City elected to provide certain necessary services and supplies by leasing portions of the airport to a fixed base operator, which would in turn provide those supplies and services to the airport users. The operation of the airport with respect to such essential functions is not for the particular benefit of the citizens of the municipality, but, rather, for the public good in general. Under these circumstances, the city was operat-

ing in its governmental capacity. *Cherry Creek Aviation v. City of Steamboat Springs*, 958 P.2d 511 (Colo. App. 1998).

Immunity from federal antitrust laws. The operation of a municipal airport pursuant to this section is immune from federal antitrust laws. *Pueblo Aircraft Serv., Inc. v. City of Pueblo*, 679 F.2d 805 (10th Cir. 1982), cert. denied, 459 U.S. 1126, 103 S. Ct. 762, 74 L. Ed. 2d 977 (1983).

The ownership and operation of an airport by a county pursuant to this section is immune from the federal antitrust laws. *Rocky Mountain Airways, Inc. v. Pitkin County*, 674 F. Supp. 312 (D. Colo. 1987).

Board of county commissioners was acting pursuant to express grants of constitutional and statutory authority in creating the Eagle county air terminal corporation as an enterprise, as defined by § 20 of article X of the state constitution, and empowering it to act on county's behalf in constructing and operating a new commercial passenger terminal. *Bd. of Comm'rs v. Fixed Base Operators*, 939 P.2d 464 (Colo. App. 1997).

Applied in *Duff v. City & County of Denver*, 147 Colo. 123, 362 P.2d 1049 (1961); *Bd. of County Comm'rs v. Intermountain Rural Elec. Ass'n*, 655 P.2d 831 (Colo. 1982).

41-4-102. Authority to establish. The board of county commissioners in any county in this state either singly or jointly with any other county, city and county, city, or town has the power to acquire, establish, construct, own, control, lease, equip, improve, maintain, operate, and regulate airports and landing fields for the use of airplanes and other aircraft and to contract or otherwise provide, by condemnation if necessary, for the removal of any airport hazard, or the removal or the relocation of all private structures, railways, mains, pipes, conduits, wires, cables, poles, and all other facilities and equipment which may interfere with the location, expansion, development, or improvement of such airports, restricted landing areas, and other air navigation facilities or with the safe approach thereto or takeoff therefrom by aircraft, and to pay the cost of removal or relocation.

Source: L. 45: p. 38, § 2. CSA: C. 45, § 243. CRS 53: § 5-4-2. C.R.S. 1963: § 5-4-2.

Cross references: For other authority to establish airports, see § 30-11-107 (1) (j).

41-4-103. Joint action by corporate authority. (1) All of the powers, rights, and authority granted to counties by this part 1 and to cities and towns by any other law may be exercised and enjoyed by such counties, cities and counties, cities, and towns, acting jointly, either within or without the territorial limits thereof, without regard to the distance said airport may be located from the boundary of any such city or town.

(2) Any two or more of such counties, cities and counties, cities, or towns may enter into agreements with each other duly authorized by resolution or ordinance for joint action pursuant to the provisions of this part 1. Each such agreement shall specify the proportionate interest which each county, city and county, city, or town has in the property, facilities, and privileges involved and the proportion of costs of acquisition, establishment, construction, enlargement, improvement, equipment, and expenses of maintenance, operation, and regulation to be borne by each, and it shall make such other provisions as may

be necessary to carry out the provisions of this part 1 for the amendment thereof and the conditions and terms upon which such agreement may be terminated.

Source: L. 45: p. 39, § 3. CSA: C. 45, § 244. CRS 53: § 5-4-3. C.R.S. 1963: § 5-4-3.

Cross references: For authority of local governments to contract with each other, see § 29-1-203.

41-4-104. Acquisition. Real property needed by any county, either acting singly or jointly, shall be acquired by purchase or by condemnation in the manner provided by law for acquiring real property for public purposes. The political subdivision exercising such power in addition to the damage for the taking, injury, or destruction of property shall also pay the cost of the removal and relocation of any structures, railways, mains, pipes, conduits, wires, cables, or poles of any public utility which is required to be moved to a new location.

Source: L. 45: p. 39, § 4. CSA: C. 45, § 245. CRS 53: § 5-4-4. C.R.S. 1963: § 5-4-4.

Cross references: For condemnation proceedings, see articles 1 to 7 of title 38.

41-4-105. Authority to incur indebtedness. The board of county commissioners of any county, either acting singly or jointly with any other county, city and county, city, or town, has the power to incur indebtedness on its behalf for any of the purposes mentioned in this part 1 and to issue bonds for the acquisition, construction, and improvement of airports, landing fields, air navigation facilities, and airport protection privileges in the same form and manner as debt is incurred and bonds issued for other county purposes; except that such indebtedness may also be approved at a special election called for that purpose by the board of county commissioners, which election shall be conducted insofar as practicable in the manner set forth in section 30-26-101, C.R.S.

Source: L. 45: p. 39, § 5. CSA: C. 45, § 246. CRS 53: § 5-4-5. C.R.S. 1963: § 5-4-5. L. 76: Entire section amended, p. 789, § 1, effective February 24.

Cross references: For the constitutional provision that establishes limitations on the incurring of debt, see § 20 of article X, Colorado Constitution; for authority of local governments to contract debts, see § 6 of article XI, Colorado Constitution; for creation of a debt by a county for acquiring or building airports and landing strips, see § 30-26-301.

41-4-106. Operation of airports. In connection with the erection, maintenance, and operation of any such airport or navigation facilities, any county has the power and jurisdiction, when acting singly, or by agreement, when acting jointly with any other county, city and county, city, or town, to regulate the receipt, deposit, and removal and the embarkation of passengers or property to or from such airports; to exact and require charges, fees, and tolls, together with a lien to enforce their payment; to lease or assign for operation such space or area, appurtenances, appliances, or other conveniences necessary or useful in connection therewith; to own and operate aircraft; to employ pilots; to provide rules and regulations governing the use of such airport and facilities and the use of other property and means of transportation within or over said airport, landing field, and navigation facilities; to perform any duties necessary or consistent for the regulation of air traffic; to enter into contracts or otherwise cooperate with the federal government or other public or private agencies; and to exercise such powers as may be required or consistent in the promotion of aeronautics and the furtherance of commerce and navigation by air.

Source: L. 45: p. 40, § 6. CSA: C. 45, § 247. CRS 53: § 5-4-6. C.R.S. 1963: § 5-4-6.

ANNOTATION

This section gave the city and county of Denver the authority to require rental car companies operating at Stapleton international airport and at Denver international airport to impose a daily usage fee on their car rental customers. It is reasonably foreseeable that implementation of that authority could displace competition in the area of car rental services. The rental car companies are entitled to state action immunity from antitrust claims. *Zimomra v. Alamo Rent-A-Car, Inc.*, 111 F.3d 1495 (10th Cir. 1997).

Board of county commissioners was acting pursuant to express grants of constitutional and statutory authority in creating the Eagle county air terminal corporation as an enterprise, as defined by § 20 of article X of the state constitution, and empowering it to act on county's behalf in constructing and operating a new commercial passenger terminal. *Bd. of Comm'rs v. Fixed Base Operators*, 939 P.2d 464 (Colo. App. 1997).

41-4-107. Appropriation for airports. The board of county commissioners of any county is hereby authorized to annually appropriate from the county general fund the sum sufficient to carry out the provisions of this part 1 relating to airports.

Source: L. 45: p. 40, § 7. CSA: C. 45, § 248. L. 51: p. 296, § 6. CRS 53: § 5-4-7. C.R.S. 1963: § 5-4-7.

41-4-108. Removal of airport hazards. Where necessary, in order to provide unobstructed airspace for the landing and taking off of aircraft utilizing airports or landing fields acquired or operated under the provisions of this part 1, any such county, city and county, city, or town, either singly or jointly, is authorized to contract or otherwise provide, by condemnation if necessary, for the removal of any airport hazard or the removal or the relocation of all private structures, railways, mains, pipes, conduits, wires, cables, poles, and other facilities and equipment which may interfere with the location, expansion, development, or improvement of such airports, restricted landing areas, and other air navigation facilities or with the safe approach thereto or takeoff therefrom by aircraft and to pay the cost of removal or relocation. A county, city and county, city, or town may acquire, in the same manner as is provided for the acquisition of property for airport purposes, easements through or other interests in airspaces over land or water, interests in airport hazards outside the boundaries of the airports or landing fields, and such other airport protection privileges as are necessary to ensure safe approaches to the landing areas of said airports or landing fields and the safe and efficient operation thereof. It is also hereby authorized to acquire, in the same manner, the right or easement, for a term of years or perpetually, to place or maintain suitable marks for the daytime markings and suitable lights for the nighttime markings of airport hazards, and including the right of ingress and egress to or from such airport hazards, for the purpose of maintaining and repairing such lights and marks. This authority shall not be so construed as to limit any right, power, or authority to zone property adjacent to airports and landing fields, under the provisions of any law of this state.

Source: L. 45: p. 40, § 8(a). CSA: C. 45, § 249. CRS 53: § 5-4-8. C.R.S. 1963: § 5-4-8.

41-4-109. Encroachment a nuisance. It is unlawful for anyone to build, rebuild, create, or cause to be built, rebuilt, or created any object or plant or cause to be planted or permit to grow higher any tree or other vegetation which shall encroach upon any airport protection privileges acquired pursuant to the provisions of section 41-4-108, but it is lawful to make maintenance repairs to or to replace parts of existing structures which do not enlarge or increase the height of an existing structure. Any such encroachment is declared to be a public nuisance and may be abated in the manner prescribed by law for the abatement of public nuisances; or the county, city and county, city, or town or the board in

charge of the airport or landing field for which airport protection privileges have been acquired may go upon the land of others and remove any such encroachment without being liable for damages.

Source: L. 45: p. 41, § 8(b). CSA: C. 45, § 250. CRS 53: § 5-4-9. C.R.S. 1963: § 5-4-9.

41-4-110. Previous acts legalized. Any acquisition of property made prior to April 3, 1945, by any county for the purposes specified in this part 1 and any bonds issued before said date by any such county for such purposes or any election held before said date by such county for the purpose of authorizing the issuance of bonds for any of the provisions specified in this part 1 are hereby legalized and made valid and effective.

Source: L. 45: p. 41, § 9. CSA: C. 45, § 251. CRS 53: § 5-4-10. C.R.S. 1963: § 5-4-10.

41-4-111. Federal aid. Any county, city and county, city, or town is authorized to accept, receive, and receipt for federal moneys for the acquisition, construction, enlargement, improvement, maintenance, equipment, or operation of airports, landing fields, air navigation facilities, or airport protection privileges under such terms and conditions as may be agreed to by such county, city and county, city, or town.

Source: L. 45: p. 41, § 10. CSA: C. 45, § 252. CRS 53: § 5-4-11. C.R.S. 1963: § 5-4-11.

41-4-112. Additional powers. The board of county commissioners of any county is authorized to rent or lease or lease and convey any lands or interest in lands acquired by the county for the purposes set forth in this part 1 to any person, partnership, association, or corporation, either public or private, for commercial, industrial, or other purposes, for such periods of years and upon such terms and conditions as are deemed in the best interests of the county by the board of county commissioners, and the terms thereof shall be binding upon succeeding boards of county commissioners. Any such instruments made and entered into before March 25, 1963, by the board of county commissioners of any county are hereby confirmed, validated, and declared to be legal and valid insofar as the authority of such board is concerned.

Source: L. 63: p. 154, § 1. CRS 53: § 5-4-12. C.R.S. 1963: § 5-4-12.

41-4-113. County airport fund. (1) A fund to be known as the county airport fund is hereby created and established in each of the counties of the state of Colorado, to which shall be credited all moneys received from state and federal sources, and appropriations thereto by the board of county commissioners, and any levies imposed by the board of county commissioners for the construction or maintenance of airports.

(2) The board of county commissioners shall appropriate from said fund for construction, maintenance, and operation of either a county airport or a municipal airport in the manner which in its judgment shall best serve the public interest.

Source: L. 63: p. 152, § 9. C.R.S. 1963: § 5-4-13. L. 88: (1) amended, p. 1094, § 13, effective January 1, 1989.

PART 2

AIRPORTS - CITIES AND TOWNS

41-4-201. Power to establish airports. The city councils and boards of trustees in towns have the power to acquire, establish, construct, own, control, lease, equip, improve,

maintain, operate, and regulate airports and landing fields for the use of airplanes and other aircraft either within or without such municipalities or may set apart and use for such purpose real property owned by such cities and towns. Any lands previously acquired by any town or city in the state of Colorado for park purposes may be used for any of the purposes specified in this section. On any airports so established, city councils and boards of trustees in towns shall grant no exclusive concession, license, or lease agreement relating to the business of servicing, repairing, or furnishing supplies for aircraft.

Source: L. 31: p. 788, § 1. CSA: C. 163, § 42. L. 47: p. 877, § 1. CRS 53: § 139-55-1. C.R.S. 1963: § 139-55-1.

Cross references: For joint action with counties, see § 41-4-103.

ANNOTATION

Construction and operation is a municipal purpose. The fact that the general assembly has authorized cities and towns generally to construct, operate, and maintain airports within or without their boundaries makes their construction, operation, and maintenance within such limits a municipal purpose. *City & County of Denver v. Bd. of Comm'rs*, 113 Colo. 150, 156 P.2d 101 (1945).

City of Pueblo, in dealings with fixed base operators at Pueblo airport, acts in govern-

mental capacity and not in a proprietary capacity. *Pueblo Aircraft Serv., Inc. v. City of Pueblo*, 498 F. Supp. 1205 (D. Colo. 1980), aff'd, 679 F.2d 805 (10th Cir. 1982), cert. denied, 459 U.S. 1126, 103 S. Ct. 762, 74 L. Ed. 2d 977 (1983).

Lands traversed by county roads. A city has the power to acquire lands for an airport which are traversed by county roads. *City & County of Denver v. Bd. of Comm'rs*, 113 Colo. 150, 156 P.2d 101 (1945).

41-4-202. How lands acquired. Real property needed by a city or town for an airport or landing field shall be acquired by purchase if the city or town is able to agree with the owners on the terms thereof and otherwise by condemnation in the manner provided by law for acquiring real property for public purposes.

Source: L. 31: p. 788, § 2. CSA: C. 163, § 43. CRS 53: § 139-55-2. C.R.S. 1963: § 139-55-2.

Cross references: For condemnation proceedings, see articles 1 to 7 of title 38.

41-4-203. Power to incur indebtedness and issue bonds. The city councils or boards of trustees in towns have the power to incur indebtedness for any of the purposes mentioned in this part 2 and to issue bonds for the acquisition, construction, and improvements of airports and landing fields and appurtenances thereto, in the same form and manner as debt is incurred and bonds are issued for other municipal purposes.

Source: L. 31: p. 789, § 3. CSA: C. 163, § 44. CRS 53: § 139-55-3. C.R.S. 1963: § 139-55-3.

Cross references: For the constitutional provision that establishes limitations on the incurring of debt, see § 20 of article X, Colorado Constitution; for authority of local governments to contract debts, see § 6 of article XI, Colorado Constitution; for general authority of cities and towns to issue bonds, see article 21 of title 31.

41-4-204. Jurisdiction to regulate use. In connection with the erection or maintenance of any such airport or air navigation facilities, any city or town, or any municipal corporation, has the power and jurisdiction to regulate the receipt, deposit, and removal and the embarkation of passengers or property to and from such landing places or moorage as may be provided; to exact and require charges, fees, and tolls, together with a lien to enforce their payment; to lease or assign for operation such space or area, appurtenances, appli-

ances, or other conveniences necessary or useful in connection therewith; to own and operate municipal aircraft; to employ pilots; to provide rules and regulations covering the use of such airport and facilities and the use of other property or means of transportation within or over the airport; to perform any duties necessary or convenient for the regulation of air traffic; to enter into contracts or otherwise cooperate with the federal government or other public or private agencies; and otherwise to exercise such powers as may be required or convenient in the promotion of aeronautics and the furtherance of commerce and navigation by air.

Source: L. 31: p. 789, § 4. CSA: C. 163, § 45. CRS 53: § 139-55-4. C.R.S. 1963: § 139-55-4.

ANNOTATION

Section clearly and affirmatively expresses a state policy to displace competition in the operation of airports and related activities including off-airport shuttle bus parking. Allright Colo. v. City and County of Denver, 937 F.2d 1502 (10th Cir. 1991), cert. denied, 502 U.S. 983, 112 S. Ct. 587, 116 L. Ed.2d 612, (1992).

City of Denver's activities regulating off-airport shuttle services were immune from federal antitrust laws. Allright Colo. v. City and County of Denver, 937 F. 2d 1502 (10th Cir. 1991), cert. denied, 502 U.S. 983, 112 S. Ct. 587, 116 L. Ed. 2d 612, (1992).

41-4-205. Funds may be raised by taxation. The city council or board of trustees may annually appropriate and cause to be raised by taxation in such city or town a sum sufficient to carry out the provisions of this part 2.

Source: L. 31: p. 790, § 5. CSA: C. 163, § 46. CRS 53: § 139-55-5. C.R.S. 1963: § 139-55-5.

Airport Revenue Bonds

ARTICLE 5

Airport Revenue Bonds - County

Cross references: (1) For definitions applicable to this article, see § 30-26-301 (2) (d). (2) For the constitutional provision that establishes limitations on the incurring of debt, see § 20 of article X, Colorado Constitution; for authority of local governments to contract debts, see § 6 of article XI, Colorado Constitution; for creation of a debt by a county for acquiring or building airports and landing strips, see § 30-26-301.

41-5-101.	Powers.		tion.
41-5-102.	Authorization - airport facilities and bonds.	41-5-106.	Rights of holders.
41-5-103.	Sinking fund - indebtedness.	41-5-107.	Powers supplemental.
41-5-104.	Signatures of county commissioners.	41-5-108.	Refunding.
41-5-105.	Bonds - exempt from taxation.	41-5-109.	Citation to this article - incontestability of bonds.

41-5-101. Powers. (1) In addition to the powers which it may now have, any county without any election of the taxpaying or qualified electors thereof has the power under this article:

(a) To acquire by gift, purchase, lease, or exercise of the right of eminent domain, to construct, to reconstruct, to improve, to better, and to extend airport facilities, including any of them within the boundaries of any said county, and to acquire by gift, purchase, or the

exercise of the right of eminent domain lands, easements, and rights in land in connection therewith;

(b) To accept loans or grants or both from the United States under any federal law in force to aid in financing the cost of engineering, architectural, or economic investigations or studies, surveys, designs, plans, working drawings, specifications, procedures, or other action preliminary to the construction of an airport;

(c) To accept loans or grants or both from the United States under any federal law in force for the construction or improvement of such airport or airport facilities or both;

(d) To prescribe, revise, and collect in advance or otherwise from any user of such facility or occupant of any real property connected therewith rentals, rates, fees, tolls, and charges, or any combination thereof, for the use of such airport facilities, including, without limiting the generality of the foregoing, landing fees, office rentals, franchise fees, and land and airport rentals; and, in anticipation of the collection of the revenues of such airport facilities, to issue revenue bonds to finance in whole or in part the cost of acquisition, construction, reconstruction, improvement, betterment, or extension of an airport;

(e) To pledge to the punctual payment of said bonds and interest thereon all or any part of the gross revenues arising from such airport facilities;

(f) To enter into and perform contracts or agreements concerning the planning, construction, lease, or other acquisition and the financing of airport facilities, and the maintenance and operation thereof;

(g) To make all contracts, execute all instruments, and do all things necessary or convenient in the exercise of the powers granted in this section or in the performance of its duties or in order to secure the payment of its bonds; but no encumbrance, mortgage, or other pledge of property, excluding any pledged revenues, of the county is created thereby no property, other than money, of the county is liable to be forfeited or taken in payment of said bonds, and no debt on the credit of the county is thereby incurred in any manner for any purpose.

Source: L. 65: p. 466, § 1. C.R.S. 1963: § 36-21-1.

41-5-102. Authorization - airport facilities and bonds. (1) The acquisition, construction, reconstruction, lease, improvement, or betterment of any airport or airport facilities, or both, and the issuance of bonds in anticipation of the collection of revenues of such facility to provide funds to pay the cost thereof may be authorized by a vote of a majority of the members of the board of county commissioners at a regular or special meeting thereof. The board shall establish a maximum net effective interest rate for the issue of bonds.

(2) The board of county commissioners, in determining such cost, may include all costs and estimated costs of the issuance of said bonds, all engineering, inspection, fiscal, and legal expenses, all preliminary planning expenses and interest which it is estimated will accrue during the construction or other acquisition period or a period not exceeding two years thereafter on money borrowed or which it is estimated will be borrowed pursuant to this article; any discount on the sale of the bonds; costs of financial, professional, and other estimates and advice; contingencies; any administrative, operating, and other expenses of the county prior to and during such acquisition period and for a period not exceeding two years thereafter, as may be determined by the board of county commissioners; and all such other expenses as may be necessary or incident to the financing, acquisition, improvement, and completion of any airport facility, and the placing of the same in operation, and also such provision or reserves for working capital, operation, or maintenance, or for payment or security of principal of or interest on any bonds during or after such an acquisition or improvement as the board of county commissioners may determine, and also reimbursements to the federal government, or any agency, instrumentality, or corporation thereof, of any moneys theretofore expended for or in connection with any such airport facilities.

(3) All revenue bonds issued under the provisions of this article shall bear interest at a rate such that the net effective interest rate for the issue of bonds does not exceed the maximum net effective interest rate authorized, and shall be executed in such a manner and be payable serially in annual installments beginning not later than two years and extending

not more than forty years from the date thereof, and may be made payable at such place as the board of county commissioners determines. Said bonds may be made callable for redemption prior to maturity in such manner, at such time, and in such amounts, upon payment of a premium not exceeding three percent of the principal, as may be determined by the board of county commissioners.

(4) Said bonds may be sold at, above, or below their par values, but they may not be sold at a price such that the net effective interest rate of the issue of bonds exceeds the maximum net effective interest rate authorized.

(5) Said bonds may be sold at private sale to the United States or any agency, instrumentality, or corporation thereof or to the state of Colorado or any agency or instrumentality thereof. Unless sold to the United States or any agency, instrumentality, or corporation thereof or to the state of Colorado or any agency or instrumentality thereof, said bonds shall be sold at public sale after notice of such sale published once at least five days prior to such sale in a newspaper of general circulation in said county or in a financial newspaper.

(6) The revenue bonds issued under this article shall be serially numbered and shall be paid off and retired in the order in which they were issued, but such order of payment shall not apply to warrants or bonds made callable for redemption prior to maturity in the inverse order of their numbers.

(7) Subject to the payment provisions in this article specifically provided, said bonds and any interest coupons thereto attached shall be fully negotiable within the meaning of and for all purposes of article 8 of title 4, C.R.S., pertaining to investment securities, except as the governing body may otherwise provide; and each holder of each such security, by accepting such security, shall be conclusively deemed to have agreed that such security, except as otherwise provided, is fully negotiable within the meaning and for all purposes of article 8 of title 4, C.R.S., pertaining to investment securities.

(8) If lost or completely destroyed, any security authorized by this article may be reissued in the form and tenor of the lost or destroyed security upon the owner's furnishing, to the satisfaction of the governing body, the following: Proof of ownership; proof of loss or destruction; a surety bond in twice the face amount of the security, including any unmatured coupons appertaining thereto; and payment of the cost of preparing and issuing the new security.

(9) The resolution authorizing any bonds or other instrument appertaining thereto may contain any agreement or provision customarily contained in instruments securing revenue bonds.

Source: L. 65: p. 467, § 1. C.R.S. 1963: § 36-21-2. L. 70: p. 139, § 7. L. 75: (7) amended, p. 227, § 92, effective July 16.

Cross references: For the definition of "net effective interest rate", as used in subsections (1), (3), and (4) of this section, see § 30-26-301 (2)(d)(I).

41-5-103. Sinking fund - indebtedness. (1) The board of county commissioners of any county is authorized to set aside a special sinking fund in the office of the county treasurer for the payment of revenue bonds authorized by and issued under the provisions of this article and for the payment of interest due on such bonds, but the general income of the county shall not be pledged for the payment of the principal of the bonds and interest thereon. The county treasurer shall deposit in said sinking fund all rents, royalties, fees, rates, and charges derived from or rendered by the airport or airport facilities, and the board of county commissioners of any county may pledge any or all moneys in said sinking fund to the payment of bonds authorized under this article and the interest thereon.

(2) Revenue bonds issued under this article shall not constitute an indebtedness of the county within the meaning of any constitutional or statutory limitations. Each bond issued under this article shall recite in substance that said bond, including interest thereon, is

payable solely from the revenues pledged to the payment thereof and that said bond does not constitute a debt of the county within the meaning of any constitutional or statutory limitations.

Source: L. 65: p. 469, § 1. C.R.S. 1963: § 36-21-3.

41-5-104. Signatures of county commissioners. The bonds and any coupons bearing the signatures of county commissioners in office on the date of the signing thereof shall be valid and binding obligations of the county, notwithstanding that, before the delivery thereof and payment thereof, any of the persons whose signatures appear thereon have ceased to be county commissioners of the county issuing the same.

Source: L. 65: p. 470, § 1. C.R.S. 1963: § 36-21-4.

41-5-105. Bonds - exempt from taxation. The bonds and the income therefrom shall be exempt from taxation, except inheritance, estate, and transfer taxes.

Source: L. 65: p. 470, § 1. C.R.S. 1963: § 36-21-5.

Cross references: For the taxation of bonds issued pursuant to the "Public Airport Authority Act", see § 41-3-107.

41-5-106. Rights of holders. (1) Any holder of any issue of bonds or any holder of bonds, subject to any contractual limitations therein, and for the equal benefit and protection of all holders of bonds similarly situated, has the following rights and powers:

(a) By mandamus or other suit, action, or proceeding at law or in equity, to enforce his and other such holders' rights against the county and its governing body to require and compel such county or governing body to perform and carry out its duties and obligations under this article and its covenants and agreements with the bondholders; and

(b) By action or suit in equity, to require the county and the governing body thereof to account as if they were the trustee of an express trust.

(2) No right or remedy conferred by this article upon any holder of bonds is intended to be exclusive of any other right or remedy, but each such right or remedy is cumulative and in addition to every other right or remedy and may be exercised without exhausting and without regard to any other remedy conferred by this article or by any other law.

Source: L. 65: p. 470, § 1. C.R.S. 1963: § 36-21-6.

41-5-107. Powers supplemental. The powers conferred by this article shall be in addition and supplemental to, and not in substitution for, any other law, and the limitations imposed by this article shall not affect any powers conferred by any other such law. Bonds may be issued under this article without regard to the provisions of any other law. The airport facilities may be acquired, purchased, constructed, reconstructed, improved, bettered, and extended, and bonds may be issued under this article for said purposes, notwithstanding that any law may provide for the acquisition, purchase, construction, reconstruction, improvement, betterment, and extension of an airport, and without regard to the requirements, restrictions, debt, or other limitations or other provisions contained in any other law, including, but not limited to, any requirement for any restriction or limitation on the incurring of indebtedness or the issuance of bonds. Insofar as the provisions of this article are inconsistent with the provisions of any other law, the provisions of this article shall be controlling.

Source: L. 65: p. 470, § 1. C.R.S. 1963: § 36-21-7.

41-5-108. Refunding. Revenue bonds issued pursuant to the provisions of this article may be refunded in the manner provided by the "Refunding Revenue Securities Law", as set forth in article 54 of title 11, C.R.S.

Source: L. 65: p. 471, § 1. C.R.S. 1963: § 36-21-8.

41-5-109. Citation to this article - incontestability of bonds. Any resolution authorizing any bonds under this article may provide that each bond therein authorized shall recite that it is issued under authority of this article. Such recital shall conclusively impart full compliance with all of the provisions of this article, and all bonds issued containing such recital shall be incontestable for any cause whatsoever after their delivery for value.

Source: L. 65: p. 471, § 1. C.R.S. 1963: § 36-21-9.

AEROSPACE

ARTICLE 6

Aerospace

41-6-101. Aerospace.

41-6-101. Limited liability for spaceflight activities - definitions - agreement and warning. (1) As used in this article, unless the context otherwise requires:

(a) "Spaceflight activity" means launch services or reentry services as those terms are defined in 51 U.S.C. sec. 50902.

(b) "Spaceflight entity" means any public or private entity holding a United States federal aviation administration launch, reentry, operator, or launch site license for spaceflight activities. The term also includes any manufacturer or supplier of components, services, or vehicles, which manufacturer or supplier has been reviewed by the United States federal aviation administration as part of issuing such a license, permit, or authorization.

(c) "Spaceflight participant" means any spaceflight participant as that term is defined in 51 U.S.C. sec. 50902.

(2) (a) Except as otherwise provided in paragraph (b) of this subsection (2), a spaceflight entity is not liable for injury to or death of a spaceflight participant resulting from the inherent risks of spaceflight activities so long as the agreement and warning contained in paragraph (b) of subsection (3) of this section is distributed and signed as required. Except as provided for in paragraph (b) of this subsection (2), a spaceflight participant or his or her representative may not maintain an action against or recover from a spaceflight entity for any loss, damage, injury, or death of the spaceflight participant resulting exclusively from any of the inherent risks of spaceflight activities.

(b) Notwithstanding the provisions of paragraph (a) of this subsection (2) to the contrary, this subsection (2) does not limit liability if the spaceflight entity does one or more of the following:

(I) Commits an act or omission that constitutes gross negligence or willful or wanton disregard for the safety of the spaceflight participant and that act or omission proximately causes loss, damage, injury, or death to the spaceflight participant;

(II) Has actual knowledge or reasonably should have known of a dangerous condition on the land or in the facilities or equipment used in the spaceflight activities and the danger proximately causes injury, damage, or death to the spaceflight participant; or

(III) Intentionally injures the spaceflight participant.

(3) (a) Every spaceflight entity providing spaceflight activities to a spaceflight participant, whether such activities occur on or off the site of a facility capable of launching a suborbital flight, shall have each spaceflight participant sign the agreement and warning statement specified in paragraph (b) of this subsection (3).

(b) The agreement shall include the following language and any other language required by federal law:

AGREEMENT AND WARNING

Under Colorado law, there is no liability for any loss, damage, injury to, or death of a spaceflight participant in a spaceflight activity provided by a spaceflight entity if such loss, damage, injury, or death results from the inherent risks of the spaceflight activity to the spaceflight participant. Injuries caused by the inherent risks of spaceflight activities may include, among others, death or injury to person or property. I, the undersigned spaceflight participant, assume the inherent risk of participating in this spaceflight activity.

(signed)

(witnessed)

(c) Failure to comply with the warning statement requirements in this section prevents a spaceflight entity from invoking the privileges of immunity provided by this section.

Source: L. 2012: Entire article added, (SB 12-035), ch. 126, p. 431, § 2, effective August 8.

Cross references: For the legislative declaration in the 2012 act adding this article, see section 1 of chapter 126, Session Laws of Colorado 2012.

